

---

DRAFT STATUTORY INSTRUMENTS

---

**2006 No.**

**The Water and Sewerage Services  
(Northern Ireland) Order 2006**

**PART I  
INTRODUCTORY**

**Title and commencement**

**1.—**(1) This Order may be cited as the Water and Sewerage Services (Northern Ireland) Order 2006.

(2) Except as provided by paragraph (3), this Order shall come into operation on such day or days as the Department may by order appoint.

(3) The following provisions come into operation on 1st January 2007—

- (a) this Part;
- (b) Article 201(11) to (13);
- (c) Part X (together with Schedule 11);
- (d) Articles 300, 302, 306 and 307; and
- (e) so much of any other provision of this Order as confers power on a Northern Ireland department to make regulations or orders or makes provision with respect to the exercise of any such power.

(4) An order under paragraph (2) providing for any provision contained in Chapter IV of Part IV to come into operation shall not be made unless a draft of the order has been laid before and approved by resolution of the Assembly.

(5) An order under paragraph (2) may contain such transitional or transitory provisions and such savings as appear to the Department to be necessary or expedient.

**Interpretation**

**2.—**(1) Subject to paragraph (13), the Interpretation Act (Northern Ireland) 1954 ([c. 33](#)) applies to this Order as it applies to an Act of the Assembly.

“accessories”, in relation to a water main, sewer or other pipe, includes any manholes, ventilating shafts, inspection chambers, settling tanks, wash-out pipes, pumps, valves, hydrants, ferrules or stopcocks for the main, sewer or other pipe, or any machinery or other apparatus which is designed or adapted for use in connection with the use or maintenance of the main, sewer or other pipe or of another accessory for it, but does not include any electronic communications apparatus (within the meaning of the Communications Act [2003 \(c. 21\)](#)) unless it—

- (a) is or is to be situated inside or in the close vicinity of the main, sewer or other pipe or inside or in the close vicinity of another accessory for it; and

(b) is intended to be used only in connection with the use or maintenance of the main, sewer or other pipe or of another accessory for it;

“analyse”, in relation to any sample of land, water or effluent, includes subjecting the sample to a test of any description;

“the Appeals Commission” means the Water Appeals Commission for Northern Ireland;

“the Authority” means the Northern Ireland Authority for Utility Regulation;

“consumers” includes both existing consumers and future consumers;

“contravention” includes a failure to comply;

“the Council” means the General Consumer Council for Northern Ireland;

“customer or potential customer”, in relation to a company holding an appointment under Chapter I of Part III, means—

(a) any person for or to whom that company provides any services in the course of carrying out the functions of a water undertaker or sewerage undertaker; or

(b) any person who might become such a person on making an application for the purpose to the company;

“DARD” means the Department of Agriculture and Rural Development;

“damage”, in relation to individuals, includes death and any personal injury, including any disease or impairment of physical or mental condition;

“DCAL” means the Department of Culture, Arts and Leisure;

“the Department” means the Department for Regional Development;

“disposal”—

(a) in relation to land, includes the creation of any estate in the land and a disposal effected by means of the surrender or other termination of any such estate; and

(b) in relation to sewage, includes treatment;

“disposal main” means (subject to paragraph (3)) any outfall pipe or other pipe which—

(a) is a pipe for the conveyance of effluent to or from any waste water treatment works, whether of a sewerage undertaker or of any other person; and

(b) is not a public sewer;

“DFP” means the Department of Finance and Personnel;

“DHSSPS” means the Department of Health, Social Services and Public Safety;

“DOE” means the Department of the Environment;

“domestic purposes”, in relation to a supply of water, shall be construed in accordance with paragraphs (4) to (6);

“drain” means (subject to paragraph (3)) a drain used for the drainage of one building or of any buildings or yards appurtenant to buildings within the same curtilage;

“the Drainage Order” means the [Drainage \(Northern Ireland\) Order 1973 \(NI 1\)](#);

“effluent” means any liquid, including particles of matter and other substances in suspension in the liquid;

“the Energy Order” means the [Energy \(Northern Ireland\) Order 2003 \(NI 6\)](#);

“engineering or building operations”, without prejudice to the generality of that expression, includes—

(a) the construction, alteration, improvement, maintenance or demolition of any building or structure or of any reservoir, watercourse, dam, weir, well, borehole or other works; and

(b) the installation, modification or removal of any machinery or apparatus;

“the Enterprise Act” means the Enterprise Act 2002 (c. 40);

“functions”, in relation to a relevant undertaker, means the functions of the undertaker under any statutory provision and shall be construed subject to Article 304;

“harbour authority” means a person who is a harbour authority within the meaning of Chapter II of Part VI of the Merchant Shipping Act 1995 (c. 21) and is not a navigation authority;

“house” means any building or part of a building which is occupied as a dwelling-house, whether or not a private dwelling-house, or which, if unoccupied, is likely to be so occupied;

“information” includes anything contained in any records, accounts, estimates or returns;

“inland waters” means—

(a) any river, stream or other watercourse whether natural or artificial and whether tidal or not;

(b) any lough, lake or pond, whether artificial or not or any reservoir or dock; and

(c) so much of any channel, creek, bay, estuary or arm of the sea as does not fall within subparagraph (a) or (b);

“lateral drain” means—

(a) so much of that part of a drain which runs from the curtilage of a building (or buildings or yards within the same curtilage) to the sewer with which the drain communicates or is to communicate as is located or is to be located in, under or over a road; or

(b) (if different and the context so requires) the part of a drain identified in a declaration of vesting made under Article 159 or in an agreement made under Article 161;

“limited company” means a company within the meaning of the Companies (Northern Ireland) Order 1986 (NI 6) which is limited by shares;

“local statutory provision” means a statutory provision which has effect only with respect to a particular area or to particular persons or works;

“meter” means any apparatus for measuring or showing the volume of water supplied to, or of effluent discharged from, any premises;

“micro-organism” includes any microscopic biological entity which is capable of replication;

“modifications” includes additions, omissions, amendments and substitutions;

“navigation authority” means any person who has a duty or power under any statutory provision to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock;

“notice” means notice in writing;

“owner”, in relation to any premises, means the person who—

(a) is for the time being receiving the rack-rent of the premises, whether on his own account or as agent or trustee for another person; or

(b) would receive the rack-rent if the premises were let at a rack-rent;

“the OFT” means the Office of Fair Trading;

“prescribed” means prescribed by regulations;

“protected land”, in relation to a company holding an appointment under Chapter I of Part III, means any land which—

(a) was transferred to that company in accordance with a scheme under Article 270;

- (b) is or has at any time on or after the transfer date been held by that company for purposes connected with the carrying out of its functions as a water undertaker or sewerage undertaker; or
- (c) has been transferred to that company in accordance with a scheme under Schedule 1 from another company in relation to which that land was protected land when the other company held an appointment under that Chapter;

“public authority” means any Northern Ireland department or department of the government of the United Kingdom, any Minister of the Crown, any district council or any person certified by the Department to be a public authority for the purposes of this Order;

“public sewer” means (subject to Article 163(2)) a sewer for the time being vested in a sewerage undertaker in its capacity as such, whether vested in that undertaker by virtue of a scheme under Article 270 or Schedule 1 or under Article 241 or otherwise, and “private sewer” shall be construed accordingly;

“railway undertaking” has the same meaning as in the Transport Act (Northern Ireland) 1967 (c. 37);

“records” includes computer records and any other records kept otherwise than in a document;

“the relevant sewerage provisions” means the following provisions of this Order—

- (a) Chapters II and III of Part VI (except so much of Chapter III of that Part as provides for regulations under Article 197 or has effect by virtue of any such regulations);
- (b) Articles 221, 232, 233(4), 236, 240, 246, 250, 255 and 262; and
- (c) the other provisions of this Order so far as they have effect for the purposes of any provision falling within head (a) or (b) of this definition;

“relevant undertaker” means a water undertaker or a sewerage undertaker;

“resource main” means (subject to paragraph (3)) any pipe, not being a trunk main, which is or is to be used for the purpose of—

- (a) conveying water from one source of supply to another, from a source of supply to a regulating reservoir or from a regulating reservoir to a source of supply; or
- (b) giving or taking a supply of water in bulk;

“road” has the same meaning as in the Roads (Northern Ireland) Order 1993 (NI 15);

“service pipe” means (subject to paragraph (3) and to Article 90(3)) so much of a pipe which is, or is to be, connected with a water main for supplying water from that main to any premises as—

- (a) is or is to be subject to water pressure from that main; or
- (b) would be so subject but for the closing of some valve,  
and includes part of any service pipe;

“services” includes facilities;

“sewer” includes (without prejudice to paragraph (3)) all sewers and drains (not being drains within the meaning given by this paragraph) which are used for the drainage of buildings and yards appurtenant to buildings;

“sewerage services” includes the disposal of sewage and any other services which are required to be provided by a sewerage undertaker for the purpose of carrying out its functions;

“special administration order” has the meaning given by Article 41;

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954 and includes any provision of this Order;

“stopcock” includes any box or pit in which a stopcock is enclosed and the cover to any such box or pit;

“street” has the same meaning as in the [Street Works \(Northern Ireland\) Order 1995 \(NI 19\)](#);

“substance” includes micro-organisms and any natural or artificial substance or other matter, whether it is in solid or liquid form or in the form of a gas or vapour;

“supply of water in bulk” means a supply of water for distribution by a water undertaker taking the supply;

“surface water” includes water from roofs;

“the transfer date” has the meaning assigned to it by Article 270(2);

“trunk main” means a water main which is or is to be used by a water undertaker for the purpose of—

- (a) conveying water from a source of supply to a filter or reservoir or from one filter or reservoir to another filter or reservoir; or
- (b) conveying water in bulk, whether in the course of taking a supply of water in bulk or otherwise, between different places outside the area of the undertaker, from such a place to any part of that area or from one part of that area to another part of that area;

“underground strata” has the same meaning as in the Water Order;

“vessel” has the same meaning as in the Water Order;

“waste water treatment works” means any works, apparatus or plant used for the disposal of sewage;

“watercourse” has the same meaning as in the Drainage Order;

“water and sewerage functions”, in relation to the Authority, has the meaning given by Article 3(2);

“water main” means (subject to paragraph (3)) any pipe, not being a pipe for the time being vested in a person other than the undertaker, which is used or to be used by a water undertaker for the purpose of making a general supply of water available to customers or potential customers of the undertaker, as distinct from for the purpose of providing a supply to particular customers;

“the Water Order” means the [Water \(Northern Ireland\) Order 1999 \(NI 6\)](#).

In this Order—

(3) In this Order—

- (a) references to a pipe, including references to a main, a drain or a sewer, shall include references to a tunnel or conduit which serves or is to serve as the pipe in question and to any accessories for the pipe; and
- (b) references to any waste water treatment works shall include references to the machinery and equipment of those works and any necessary pumping stations and outfall pipes;

and, accordingly, references to the laying of a pipe shall include references to the construction of such a tunnel or conduit, to the construction or installation of any such accessories and to the making of a connection between one pipe and another.

(4) Subject to paragraphs (5) and (6), in this Order references to domestic purposes, in relation to a supply of water to any premises or in relation to any cognate expression, are references to the drinking, washing, cooking, central heating and sanitary purposes for which water supplied to those premises may be used.

(5) Where the whole or any part of the premises are or are to be occupied as a house, those purposes shall be taken to include—

- (a) the purposes of a profession carried on in that house or, where—
    - (i) that house and another part of the premises are occupied together; and
    - (ii) the house comprises the greater part of what is so occupied,  
in that other part; and
  - (b) such purposes outside the house (including the washing of vehicles and the watering of gardens) as are connected with the occupation of the house and may be satisfied by a supply of water drawn from a tap inside the house and without the use of a hosepipe or similar apparatus.
- (6) No such reference to domestic purposes shall be taken to include a reference—
- (a) to the purposes of the business of a laundry; or
  - (b) to any purpose of a business of preparing food or drink for consumption otherwise than on the premises.
- (7) Nothing in Part IV or VI by virtue of which a relevant undertaker owes a duty to any particular person to lay any water main, resource main or service pipe or any sewer, lateral drain, disposal main or discharge pipe shall be construed—
- (a) as conferring any power in addition to the powers conferred apart from those Parts; or
  - (b) as requiring the undertaker to carry out any works which it has no power to carry out.
- (8) References in this Order to the fixing of charges in relation to any premises by reference to volume are references to the fixing of those charges by reference to the volume of water supplied to those premises, to the volume of effluent discharged from those premises, to both of those factors or to one or both of those factors taken together with other factors.
- (9) In this Order references to the supply system of a water undertaker are to the water mains and other pipes which it is the undertaker's duty to develop and maintain by virtue of Article 65.
- (10) For the purposes of any provision of this Order by or under which power is or may be conferred on any person to recover the expenses incurred by that person in doing anything, those expenses shall be assumed to include such sum as may be reasonable in respect of establishment charges or overheads.
- (11) References in this Order to the later or latest of two or more different times or days are, in a case where those times or days coincide, references to the time at which or, as the case may be, the day on which they coincide.
- (12) For the purposes of this Order any property of the Northern Ireland Transport Holding Company which is used by a railway undertaking for the purposes of its undertaking shall be treated as property of that railway undertaking.
- (13) Section 24(1) of the Interpretation Act (Northern Ireland) 1954 (c. 33) (service of documents) shall have effect in relation to the service of any document required or authorised by virtue of this Order to be served on any person with the omission of the word "registering".
- (14) The Department may by order provide that references in this Order, or in any statutory provision amended by this Order, to assets of, or belonging to, or vested in, a relevant undertaker are to be read as including references to assets controlled, operated or used by the undertaker for the purposes of its functions as such.

## PART II

### REGULATORY AUTHORITIES AND GENERAL DUTIES

#### *The Northern Ireland Authority for Utility Regulation*

##### **The Authority**

**3.—**(1) The body corporate established by Article 3 of the Energy Order as the Northern Ireland Authority for Energy Regulation shall hereafter be known as the Northern Ireland Authority for Utility Regulation.

(2) In addition to the functions referred to in paragraph (1) of that Article, the Authority shall carry out the functions conferred or imposed on it by or under this Order (referred to in this Order as the “water and sewerage functions” of the Authority).

(3) In Schedule 1 to the Energy Order for paragraph 1 (membership of the Authority) substitute—

“**1.—**(1) The Authority shall consist of—

- (a) a chairman; and
- (b) not fewer than three other members,

appointed by the Department of Finance and Personnel.

(2) The Department of Finance and Personnel shall consult the chairman before appointing any other member.”.

(4) In that Schedule for “the Department” in every other place where it occurs substitute “the Department of Finance and Personnel”.

##### **Forward work programme of the Authority**

**4.—**(1) The Authority shall, before each financial year, publish a document (the “forward work programme”) containing a general description of the projects which it plans to undertake during the year in the exercise of its functions under this Order (other than projects comprising routine activities in the exercise of those functions).

(2) That description shall include the objectives of each project.

(3) The forward work programme for any year shall also include an estimate of the overall expenditure which the Authority expects to incur during the year in the exercise of its functions under this Order.

(4) The forward work programme prepared under this Article may, if the Authority so decides, be combined in a single programme with the forward work programme of the Authority prepared under Article 5 of the Energy Order.

(5) Before publishing the forward work programme for any year (other than one which is combined as mentioned in paragraph (4)), the Authority shall give notice—

- (a) containing a draft of the forward work programme; and
- (b) specifying the time within which representations or objections to the proposals contained in it may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(6) The notice under paragraph (5) shall be published by the Authority in such manner as it considers appropriate for the purpose of bringing the matters contained in it to the attention of persons likely to be affected by them.

(7) The Authority shall send a copy of any notice given by it under paragraph (5) to the Council and the Department.

### **Annual report of the Authority**

**5.—**(1) The Authority shall, as soon as practicable after the end of each financial year, make to the Department a report (the “annual report” for that year) on—

- (a) its activities during that year in the exercise of its functions under this Order; and
- (b) the activities of the Competition Commission during that year in respect of any references made by the Authority under this Order.

(2) The annual report for each year shall include—

- (a) a general survey of developments in respect of matters falling within the scope of the Authority’s functions under this Order;
- (b) a report on the progress of the projects described in the forward work programme for that year prepared under Article 4;
- (c) a summary of final and provisional orders made, and penalties imposed, by the Authority under Part III during the year; and
- (d) a report on such other matters as the Department may from time to time require.

(3) The annual report for each year shall set out any general directions given by the Department under Article 60(3).

(4) The Department shall consult the Authority before exercising the power under paragraph (2) (d) in relation to any matter.

(5) The annual report prepared under this Article may, if the Authority so decides, be combined in a single report with the annual report of the Authority prepared under Article 6 of the Energy Order.

(6) Where the annual report prepared under this Article is not so combined, the Department shall—

- (a) lay a copy of the report before the Assembly; and
- (b) arrange for the report to be published in such manner as the Department considers appropriate.

(7) The Authority may also—

- (a) prepare other reports with respect to any matter falling within the scope of its functions under this Order; and
- (b) arrange for any such report to be published in such manner as it considers appropriate.

(8) The Authority shall send—

- (a) a copy of each annual report published under paragraph (6)(b) to the Council; and
- (b) a copy of each report under paragraph (7) to the Department and the Council.

(9) In making or preparing any report under this Article the Authority shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual or body.



## *General duties*

### **General duties with respect to water industry**

**6.—**(1) This Article shall have effect for imposing duties on the Department and the Authority as to when and how they should carry out the following functions—

- (a) in the case of the Department, its functions under the provisions of this Order relating to the regulation of relevant undertakers; and
- (b) in the case of the Authority, its functions under the provisions of this Order relating to—
  - (i) the regulation of relevant undertakers;
  - (ii) the financial conditions of requisitions; or
  - (iii) the movement of certain pipes.

(2) The Department or, as the case may be, the Authority shall carry out the functions mentioned in paragraph (1) in the manner that it considers is best calculated—

- (a) to protect the interests of consumers in relation to the supply of water by water undertakers and the provision of sewerage services by sewerage undertakers, wherever appropriate by facilitating effective competition between persons engaged in, or in commercial activities connected with, the supply of water and the provision of sewerage services;
- (b) to secure that the functions of a water undertaker and of a sewerage undertaker are properly carried out as respects every area of Northern Ireland; and
- (c) to secure that companies holding appointments under Chapter I of Part III as relevant undertakers are able (in particular, by securing reasonable returns on their capital) to finance the proper carrying out of the functions of such undertakers.

(3) For the purposes of paragraph (2)(a) the Department or, as the case may be, the Authority shall have regard to the interests of—

- (a) individuals who are disabled or chronically sick;
- (b) individuals of pensionable age;
- (c) individuals with low incomes; and
- (d) individuals residing in rural areas,

but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer.

(4) The Department and the Authority may, in carrying out any of the functions mentioned in paragraph (1), have regard to—

- (a) any interests of consumers in relation to electricity supplied by authorised suppliers (within the meaning of the Energy Order);
- (b) any interests of consumers in relation to gas supplied by authorised suppliers (within the meaning of that Order);
- (c) any interests of consumers in relation to communications services and electronic communications apparatus (within the meaning of the Communications Act 2003 (c. 21),

which are affected by the carrying out of that function.

(5) Subject to paragraph (2), the Department or, as the case may be, the Authority shall carry out the functions mentioned in paragraph (1) in the manner that it considers is best calculated—

- (a) to promote economy and efficiency on the part of companies holding an appointment under Chapter I of Part III in the carrying out of the functions of a relevant undertaker;

- (b) to secure that no undue preference is shown, and that there is no undue discrimination, in the fixing by such companies of water and sewerage charges;
  - (c) to secure that consumers are protected as respects benefits that could be secured for them by the application in a particular manner of any of the proceeds of any disposal (whenever made) of any of such a company's protected land;
  - (d) to ensure that consumers are also protected as respects any activities of such a company which are not attributable to the exercise of functions of a relevant undertaker, or as respects any activities of any person appearing to the Department or, as the case may be, the Authority to be connected with the company, and in particular by ensuring—
    - (i) that any transactions are carried out at arm's length;
    - (ii) that the company, in relation to the exercise of its functions as a relevant undertaker, maintains and presents accounts in a suitable form and manner;
  - (e) to contribute to the achievement of sustainable development.
- (6) In carrying out any of the functions mentioned in paragraph (1) in accordance with the preceding provisions of this Article, the Department and the Authority shall have regard to the principles of best regulatory practice (including the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed).
- (7) In this Article the references to water and sewerage charges are references to—
- (a) any charges in respect of any services provided in the course of the carrying out of the functions of a relevant undertaker; and
  - (b) amounts of any other description which such an undertaker is authorised by or under any statutory provision to require any of its customers or potential customers to pay.
- (8) For the purposes of this Article—
- (a) subject to paragraph (9), the reference in paragraph (1) to the provisions of this Order relating to the regulation of relevant undertakers is a reference to the provisions contained in Part III (except Article 45), or in any of Articles 66, 69 to 73, 150, 152, 214, 243, 244, 253, 254 and 259 to 261;
  - (b) the reference in that paragraph to the provisions relating to the financial conditions of requisitions is a reference to the provisions contained in Articles 77, 83, 88 and 155; and
  - (c) the reference in that paragraph to the provisions relating to the movement of certain pipes is a reference to the provisions of Article 247.
- (9) Paragraphs (2) to (6) do not apply in relation to anything done by the Authority in the exercise of functions assigned to it by Article 29(3) (Competition Act functions).
- (10) The Authority may nevertheless when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of paragraphs (2) to (6) if it is a matter to which the OFT could have regard when exercising that function.
- (11) The duties imposed by paragraphs (2) to (6) do not affect the obligation of the Department or, as the case may be, the Authority to perform or comply with any other duty or requirement (whether arising under this Order or another statutory provision, by virtue of any Community obligation or otherwise).

### **Guidance on social and environmental matters**

7.—(1) The Department may from time to time issue guidance about the making by the Authority in the exercise of its water and sewerage functions of a contribution towards the attainment of any social or environmental policies set out or referred to in the guidance.

(2) In formulating guidance, the Department shall, where practicable, have regard to the costs and benefits which may be expected to result from the guidance.

(3) The Authority shall, in exercising and performing the functions mentioned in Article 6(1) (subject to Article 6(6)), have regard to any guidance issued under this Article.

(4) Before issuing guidance under this Article the Department shall consult—

- (a) the Authority;
- (b) the Council;
- (c) relevant undertakers;
- (d) DOE; and
- (e) such other persons, if any, as the Department considers it appropriate to consult in relation to the guidance.

(5) A draft of any guidance proposed to be issued by the Department under this Article shall be laid before the Assembly.

(6) Guidance shall not be issued by the Department under this Article until after the statutory period beginning with the day on which the draft is laid before the Assembly.

(7) If, before the end of that period, the Assembly resolves that the guidance should not be issued, the Department shall not issue it.

(8) The Department shall arrange for any guidance issued by it under this Article to be published in such manner as it considers appropriate.

### **General environmental and recreational duties**

8.—(1) It shall be the duty of each of the following—

- (a) a Northern Ireland department;
- (b) the Authority; and
- (c) every company holding an appointment as a relevant undertaker,

in formulating or considering any proposals relating to any functions of a relevant undertaker (including, in the case of such a company, any functions which, by virtue of that appointment, are functions of the company itself) to comply with the requirements imposed in relation to the proposals by paragraphs (2) and (3).

(2) The requirements imposed by this paragraph in relation to any such proposals as are mentioned in paragraph (1) are—

- (a) a requirement, so far as may be consistent—
  - (i) with the purposes of any statutory provision relating to the functions of the undertaker; and
  - (ii) in the case of the Department and the Authority, with their duties under Article 6, so to exercise any power conferred with respect to the proposals on the body subject to the requirement as to further the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest and, in the case of the exercise of such a power by a company holding an appointment as a relevant undertaker, as to further water conservation;
- (b) a requirement to have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural or historic interest; and
- (c) a requirement to take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area or on any such flora, fauna, features, buildings, sites or objects.

(3) The requirements imposed by this paragraph in relation to any such proposals as are mentioned in paragraph (1) are, subject to the requirements imposed by paragraph (2)—

- (a) a requirement to have regard to the desirability of preserving for the public any freedom of access to areas of woodland, mountains, cliff or foreshore and other places of natural beauty;
- (b) a requirement to have regard to the desirability of maintaining the availability to the public of any facility for visiting or inspecting any building, site or object of archaeological, architectural or historic interest; and
- (c) a requirement to take into account any effect which the proposals would have on any such freedom of access or on the availability of any such facility.

(4) Paragraphs (1) to (3) shall apply so as to impose duties on the Authority and any company holding an appointment as a relevant undertaker in relation to any proposal relating to the functions of the Department, DOE or DARD as they apply in relation to any proposals relating to the functions of such an undertaker; and for the purposes of this paragraph the reference in paragraph (2)(a) to the functions of the undertaker shall have effect as a reference to the functions of the department in question.

(5) It shall be the duty of every company holding an appointment as a relevant undertaker to take such steps as are—

- (a) reasonably practicable; and
- (b) consistent with the purposes of the statutory provisions relating to the functions of the undertaker in question,

for securing, so long as that company has rights to the use of water or land associated with water, that those rights are exercised so as to ensure that the water or land is made available for recreational purposes and is so made available in the best manner.

(6) It shall be the duty of a company holding an appointment as a relevant undertaker, in determining what steps to take in performance of any duty imposed by virtue of paragraph (5), to take into account the needs of persons who are chronically sick or disabled.

(7) The obligations under this Article of a company holding an appointment as a relevant undertaker shall be enforceable under Article 30 by the Department.

(8) Nothing in this Article or the following provisions of this Order shall require recreational facilities made available by a relevant undertaker to be made available free of charge.

(9) References in this Article to the functions of a relevant undertaker shall be construed, without prejudice to Article 217(7), as if those functions included the management, by a company holding an appointment as such an undertaker, of any land for the time being held by that company for any purpose whatever (whether or not connected with the carrying out of the functions of a relevant undertaker).

(10) In this Article “building” includes structure.

### **Environmental duties with respect to areas of special interest**

9.—(1) Where DOE is of the opinion that any area of land—

- (a) is of special interest by reason of its flora, fauna or geological or physiographical features; and
- (b) may at any time be affected by schemes, works, operations or activities of a relevant undertaker,

DOE shall notify the fact that the land is of special interest for that reason to every relevant undertaker whose works, operations or activities may affect the land.

(2) Where a relevant undertaker has received a notification under paragraph (1) with respect to any land, that undertaker shall consult DOE before carrying out any works, operations or activities which appear to that undertaker to be likely to destroy or damage any of the flora, fauna, or geological or physiographical features by reason of which the land is of special interest.

(3) Paragraph (2) shall not apply in relation to anything done in an emergency where particulars of what is done and of the emergency are notified to DOE as soon as practicable after that thing is done.

(4) The obligations under this Article of a relevant undertaker shall be enforceable under Article 30 by the Department.

(5) Article 8(9) shall apply, as it applies in relation to that Article, for construing (in accordance with Article 13) any references in this Article to a relevant undertaker.

### **Codes of practice with respect to environmental and recreational duties**

**10.**—(1) The Department may by order approve any code of practice issued (whether by it or by another person) for the purpose of—

- (a) giving practical guidance to relevant undertakers with respect to any of the matters for the purposes of which Articles 8 and 9 have effect; and
- (b) promoting what appear to it to be desirable practices by such undertakers with respect to those matters,

and may at any time by such an order approve a modification of such a code or withdraw its approval of such a code or modification.

(2) A contravention of a code of practice as for the time being approved under this Article shall not of itself constitute a contravention of any requirement imposed by Article 8 or 9 or give rise to any criminal or civil liability.

(3) But the Department, the other relevant Northern Ireland departments and any other public authority shall each be under a duty to take into account whether there has been or is likely to be any such contravention in determining when and how it should exercise its powers in relation to any relevant undertaker by virtue of this Order or any other statutory provision.

(4) An order under this Article shall be subject to negative resolution.

(5) The Department shall not make an order under this Article unless it has first consulted—

- (a) the other relevant Northern Ireland departments;
- (b) the Sports Council for Northern Ireland; and
- (c) such relevant undertakers and other persons as the Department considers it appropriate to consult.

(6) In this Article “the other relevant Northern Ireland departments” means—

- (a) DARD;
- (b) DCAL; and
- (c) DOE.

### **Co-operation between water regulators**

**11.**—(1) This Article imposes duties on each of the following—

- (a) the Department;
- (b) DOE; and
- (c) the Authority.

(2) It is the duty of each of those mentioned in paragraph (1) to make arrangements with each of the others with a view to promoting in the case of each pair of them—

- (a) co-operation and the exchange of information between them; and
- (b) consistency of treatment of matters which affect both of them.

(3) That duty relates only—

- (a) in the case of the Authority and the Department, to their functions under this Order relating to the regulation of water and sewerage undertakers;
- (b) in the case of DOE, to its functions under any statutory provision concerning water resources and water pollution so far as they relate to water and sewerage undertakers.

(4) As soon as practicable after agreement is reached on any arrangements required by this Article, the parties shall prepare a memorandum setting them out.

(5) The parties to any such arrangements shall keep them under review.

(6) As soon as practicable after agreement is reached on any changes to arrangements required by this Article, the parties shall revise their memorandum.

(7) Parties to arrangements required by this Article shall send a copy of their memorandum (and any revised memorandum) to the person mentioned in paragraph (1) who is not a party to the arrangements set out in it.

(8) The Department shall lay before the Assembly a copy of every memorandum (and revised memorandum) under this Article.

### **General duties with respect to the water industry**

**12.**—(1) It shall be the duty of a body to which this Article applies in exercising any of its powers under any statutory provision to have particular regard to the duties imposed under Parts IV to VI on any relevant undertaker which appears to that body to be or to be likely to be affected by the exercise of the power in question.

(2) It shall also be the duty of such a body—

- (a) in considering whether or not to exercise any of its powers under any statutory provision in relation to a relevant undertaker; or
- (b) in deciding the manner in which to exercise any such power,

to take into account the likely costs and benefits of the exercise or non-exercise of the power or its exercise in the manner in question.

(3) Paragraph (2) does not apply to the extent that it is unreasonable for the body to comply with it in view of the nature or purpose of the power or in the circumstances of the particular case.

(4) Paragraph (2) does not affect a body's obligations to discharge any duties, comply with any requirements or pursue any objectives imposed upon or given to it otherwise than under that paragraph.

(5) This Article applies to—

- (a) DOE;
- (b) DARD;
- (c) DCAL;
- (d) any other body which the Department may prescribe.

## PART III

### APPOINTMENT AND REGULATION OF UNDERTAKERS

#### CHAPTER I

#### APPOINTMENTS

#### *Making of appointments*

#### **Appointment of relevant undertakers**

**13.—**(1) Subject to the following provisions of this Chapter, a company may be appointed—

- (a) by the Department; or
- (b) with the consent of or in accordance with a general authorisation given by the Department, by the Authority,

to be the water undertaker or sewerage undertaker for any area.

(2) Without prejudice to the obligation of a company holding an appointment under this Chapter to comply with the conditions of its appointment, the appointment of a company to be the water undertaker or sewerage undertaker for any area shall have the effect, while the appointment remains in force—

- (a) of requiring the company to perform any duty imposed by or under any statutory provision on an undertaker of the relevant description (that is to say, a water undertaker or, as the case may be, sewerage undertaker);
- (b) of authorising the company, for the purposes of, or in connection with, the carrying out of any of the functions of an undertaker of the relevant description, to exercise any power conferred by or under any statutory provision on an undertaker of that description;
- (c) of requiring statutory provisions authorising or requiring anything to be done in relation to an undertaker of the relevant description to be construed as authorising or requiring that thing to be done in relation to that company; and
- (d) of requiring other references in any statutory provision to an undertaker of the relevant description, or to the area of that undertaker, to be construed, so far as necessary for the purposes of, or in connection with, the carrying out by that company of the functions of an undertaker of that description, as references to that company or, as the case may be, to that area.

(3) The appointment of a company to be a relevant undertaker shall be by service on the company of an instrument in writing containing the appointment and describing the area for which it is made.

(4) A single instrument may contain the appointment of a company to be the sewerage undertaker for an area and the appointment of the same company to be the water undertaker for the whole or any part of that area or for an area which includes the whole or any part of that area.

(5) A company shall not be appointed to be a water undertaker or a sewerage undertaker unless it is a limited company.

(6) As soon as practicable after making an appointment under this Chapter, the Department shall send a copy of the appointment to the Authority.

#### **Continuity of appointments, replacement appointments, etc.**

**14.—**(1) It shall be the duty of the Department to secure that such appointments are made under this Chapter as will ensure that for every area of Northern Ireland there is at all times both—

- (a) a company holding an appointment under this Chapter as water undertaker; and
  - (b) whether or not the same company in relation to the whole or any part of that area, a company holding an appointment as sewerage undertaker.
- (2) Subject to the following provisions of this Article—
- (a) the Department; and
  - (b) with the consent of or in accordance with a general authorisation given by the Department, the Authority,
- shall have power, by notice to a company holding an appointment under this Chapter, to terminate the appointment or to vary the area to which it relates.
- (3) The appointment of a company to be a water undertaker or sewerage undertaker shall not be terminated or otherwise cease to relate to or to any part of any area except with effect from the coming into force of such appointments and variations replacing that company as a relevant undertaker as secure either—
- (a) that another company becomes the water undertaker or, as the case may be, sewerage undertaker for that area or part or for an area that includes that area or part; or
  - (b) that two or more companies each become the water undertaker or, as the case may be, sewerage undertaker for one of a number of different areas that together constitute or include that area or part.
- (4) An appointment or variation replacing a company as a relevant undertaker shall not be made in relation to the whole or any part of the area to which that company's appointment as water undertaker or, as the case may be, sewerage undertaker relates except where—
- (a) that company consents to the appointment or variation;
  - (b) the appointment or variation relates only to parts of that area none of the premises in which is served by that company;
  - (c) the appointment or variation relates only to parts of that area and the conditions mentioned in paragraph (5) are satisfied in relation to each of the premises in those parts which are served by that company; or
  - (d) the appointment or variation is made in such circumstances as may be set out for the purposes of this paragraph in the conditions of that company's appointment.
- (5) The conditions are that—
- (a) the premises are, or are likely to be, supplied with not less than 100 megalitres of water in any period of 12 months; and
  - (b) the person who is the customer in relation to the premises consents in writing to the appointment or variation.
- (6) The Department may, after consulting the Authority, make regulations amending paragraph (5)(a) by substituting, for the quantity of water for the time being specified there, such smaller quantity as the Department considers appropriate.

### **Procedure with respect to appointments and variations**

- 15.—**(1) An application for an appointment or variation replacing a company as a relevant undertaker shall be made in such manner as may be prescribed.
- (2) Within 14 days after making an application under this Article, the applicant shall—
- (a) serve notice of the application on the existing appointee and DOE; and
  - (b) publish a copy of the notice in such manner as may be prescribed.



(3) Before making an appointment or variation replacing a company as a relevant undertaker, the Department or the Authority shall give notice—

- (a) stating that it proposes to make the appointment or variation;
- (b) stating the reasons why it proposes to make the appointment or variation; and
- (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed appointment or variation may be made.

(4) A notice under paragraph (3) shall be given—

- (a) by publishing the notice in such manner as the Department or, as the case may be, the Authority considers appropriate for bringing it to the attention of persons likely to be affected by the making of the proposed appointment or variation; and
- (b) by serving a copy of the notice on the existing appointee and DOE.

(5) As soon as practicable after making an appointment or variation replacing a company as a relevant undertaker, the Department or the Authority shall—

- (a) serve a copy of the appointment or variation on the existing appointee; and
- (b) serve notice of the making of the appointment or variation on DOE.

(6) As soon as practicable after exercising any power to vary the area to which an appointment under this Chapter relates, the Department shall send a copy of the variation to the Authority.

(7) In this Article “the existing appointee”, in relation to an appointment or variation replacing a company as a relevant undertaker, means the company which is replaced in relation to the whole or any part of the area to which the appointment or variation relates or, where there is more than one such company, each of them.

(8) The Department may by regulations impose such additional procedural requirements as it considers appropriate for any case where the conditions mentioned in Article 14(5) are required to be satisfied in relation to an application for an appointment or variation replacing a company as a relevant undertaker.

### **Duties affecting making of appointments and variations**

**16.—**(1) Before making an appointment or variation replacing a company as a relevant undertaker, the Department or the Authority shall consider any representations or objections which have been duly made in pursuance of the notice under Article 15(3) and have not been withdrawn.

(2) Before making an appointment or variation replacing a company as a relevant undertaker, the Department shall consult the Authority.

(3) In determining whether to make an appointment or variation by virtue of Article 14(4)(b) or (c) in relation to any part of an area, the Department or, as the case may be, the Authority shall have regard, in particular, to any arrangements made or expenditure incurred by the existing appointee for the purpose of enabling premises in that part of that area to be served by that appointee.

(4) It shall be the duty of the Department or, as the case may be, of the Authority—

- (a) in making an appointment or variation replacing a company as a relevant undertaker; and
- (b) where it makes such an appointment or variation, in determining what provision is to be made with respect to the fixing by the new appointee of any water or sewerage charges,

to ensure, so far as may be consistent with its duties under Part II, that the interests of the members and creditors of the existing appointee are not unfairly prejudiced as respects the terms on which the new appointee could accept transfers of property, rights and liabilities from the existing appointee.

(5) In this Article—

“existing appointee”, in relation to an appointment or variation replacing a company as a relevant undertaker in relation to any area or part of an area, means the company which is replaced by that appointment or variation;

“new appointee”, in relation to such an appointment or variation, means the company which by virtue of the appointment or variation becomes a relevant undertaker for the area or part of an area in question;

“water or sewerage charges” means—

- (a) charges in respect of any services provided in the course of the carrying out of the functions of a water undertaker or sewerage undertaker; or
- (b) amounts of any other description which such an undertaker is authorised by or under any statutory provision to require any person to pay.

### **Transitional provision with respect to replacement appointments**

**17.—**(1) Schedule 1 shall have effect for enabling provision to be made with respect to cases in which a company is replaced by another as a relevant undertaker by an appointment or variation under this Chapter.

(2) Paragraphs (3) and (4) apply where, by such an appointment or variation, one company (“the new undertaker”) is to replace another company as a relevant undertaker, but the appointment or variation has not come into force.

(3) Such provisions of this Order as the Department may prescribe shall apply (with any prescribed modifications) in relation to the new undertaker as if the appointment or variation had come into force.

(4) Such of the conditions imposed on the new undertaker under Article 18 as the Authority may specify in a notice given by it to the undertaker shall have effect, in relation to the operation of any provision prescribed under paragraph (3) before the appointment or variation comes into force, as if the appointment or variation had come into force.

### *Conditions of appointment*

### **Power to impose conditions**

**18.—**(1) An appointment under this Chapter may include—

- (a) such conditions as appear to the Department or, as the case may be, the Authority to be requisite or expedient having regard to the duties imposed on it by Part II;
- (b) conditions for the purposes of Article 14(4)(d); and
- (c) conditions requiring the rendering to the Department or, as the case may be, the Authority of a payment on the making of an appointment, or payments while such an appointment is in force, or both, of such amount or amounts as may be determined by or under the conditions.

(2) Conditions may be included by virtue of paragraph (1)(a) in an appointment under this Chapter whether or not they are connected with the supply of water, the provision of sewerage services or the carrying out of the functions under any statutory provision of water undertakers or sewerage undertakers.

(3) Conditions included in an appointment under this Chapter may contain provision for the conditions to cease to have effect or be modified at such times, in such manner and in such circumstances as may be specified in or determined by or under the conditions.

(4) Any provision included by virtue of paragraph (3) in an appointment under this Chapter shall have effect in addition to the provision made by this Chapter with respect to the modification of the conditions of an appointment.

(5) For the purposes of this Order where the same instrument contains an appointment of the same company to be both a water undertaker and a sewerage undertaker (whether or not for the same area), all the conditions included in that instrument by virtue of this Article shall have effect, irrespective of their subject-matter, as conditions of both appointments.

(6) Where an instrument of appointment has been served under paragraph (3) of Article 13 on any company, the coming into force of the appointment for the purposes specified in paragraph (2) of that Article shall not be affected by any contravention of the requirements of this Order with respect to the provision contained by way of conditions of appointment in that instrument.

(7) If the Department considers it appropriate to do so in consequence of any legal proceedings with respect to any such provision as is mentioned in paragraph (6), it may by order direct that such conditions as may be specified in the order are to be treated as included in the appointment in question until there is an opportunity for the provision to which the proceedings relate to be replaced by virtue of any of the other provisions of this Chapter.

(8) Any sums received by the Department or the Authority in consequence of the provisions of any condition of an appointment under this Chapter shall be paid into the Consolidated Fund.

### **Determinations under conditions of appointment**

**19.**—(1) Without prejudice to the generality of sub-paragraph (a) of Article 18(1), conditions included in an appointment by virtue of that sub-paragraph may—

- (a) require the appointed company to comply with any direction given by the Authority as to such matters as are specified in the appointment or are of a description so specified; and
- (b) require the appointed company, except in so far as the Authority consents to the company's doing or not doing them, not to do or to do such things as are specified in the appointment or are of a description so specified.

(2) Without prejudice as aforesaid, such conditions may provide for the reference to and determination by—

- (a) the Department or the Authority; or
- (b) on a reference by the Authority, the Competition Commission,

of such questions arising under the appointment and of such other matters, including (in the case of references to the Commission) disputes as to determinations by the Authority, as are specified in the appointment or are of a description so specified.

(3) Where any question or other matter falls to be determined by the Competition Commission in pursuance of a provision contained in an appointment under this Chapter—

- (a) it shall be the duty of the Authority, on being required to do so by the company holding that appointment, to refer that question or matter to that Commission; and
- (b) it shall be the duty of that Commission to determine any question or other matter referred by virtue of sub-paragraph (a) in accordance with the principles which apply, by virtue of Part II, in relation to determinations under this Chapter by the Authority.

(4) For the purposes of paragraph (3), where—

- (a) the question or matter referred to the Competition Commission concerns the review of a price control imposed on the company holding the appointment; and
- (b) the Commission is to decide to what extent it is reasonable to take into account in its determination costs incurred or borne by the company in connection with the reference,

the Commission shall also have regard to the extent to which, in its view, its determination is likely to support the company's (rather than the Authority's) claims in relation to the question or matter referred to it.

(5) Paragraphs (4) and (5) of Article 21, and Articles 26 and 27 apply to references to the Competition Commission under this Article as they apply to references under Article 21.

(6) A report of the Competition Commission on a reference under this Article—

- (a) shall be made to the Authority; and
- (b) shall include definite conclusions on the questions or other matters comprised in the reference, together with such an account of its reasons for those conclusions as, in the opinion of the Commission, is expedient for facilitating a proper understanding of those questions or other matters and of its conclusions,

and paragraphs (10) and (11) of Article 24 apply to such a report as they apply to a report on a reference under Article 21.

### *Modification of appointment conditions*

#### **Modification by agreement**

**20.**—(1) Subject to the following provisions of this Article, the Authority may modify the conditions of a company's appointment under this Chapter if the company consents to the modifications.

(2) Before making modifications under this Article, the Authority shall give notice—

- (a) stating that it proposes to make the modifications and setting out their effect;
- (b) stating the reasons why it proposes to make the modifications; and
- (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(3) A notice under paragraph (2) shall be given—

- (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
- (b) by serving a copy of the notice on the company and on the Department.

(4) The Authority shall not under this Article make any modifications which the Department has, within the time specified in the notice under paragraph (2), directed the Authority not to make.

(5) The Department shall not give a direction under paragraph (4) in relation to any modification unless—

- (a) the modification is a modification of provision contained in the appointment for the purposes of Article 14(4)(d);
- (b) the modification is a modification of a provision of the appointment which relates to the disposal of a company's protected land and is stated in the appointment to be a provision which cannot be modified; or
- (c) it appears to the Department that the modification should be made, if at all, under Article 25.

## Modification references to Competition Commission

**21.**—(1) The Authority may make to the Competition Commission a reference which is so framed as to require the Commission to investigate and report on the questions—

- (a) whether any matters which—
  - (i) relate to the carrying out of any function which is a function of any company by virtue of an appointment of that company under this Chapter; and
  - (ii) are specified in the reference, operate, or may be expected to operate, against the public interest; and
- (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the conditions of the company's appointment.

(2) The Authority may, at any time, by notice given to the Competition Commission vary a reference under this Article by—

- (a) adding to the matters specified in the reference; or
- (b) excluding from the reference some or all of the matters so specified;

and on receipt of any such notice the Commission shall give effect to the variation.

(3) The Authority may specify in a reference under this Article, or a variation of such a reference, for the purpose of assisting the Competition Commission in carrying out the investigation on the reference—

- (a) any effects adverse to the public interest which, in its opinion, the matters specified in the reference or variation have or may be expected to have; and
- (b) any modifications of the conditions of any appointment mentioned in the reference or variation by which, in its opinion, those effects could be remedied or prevented.

(4) As soon as practicable after making a reference under this Article or a variation of such a reference, the Authority shall—

- (a) serve a copy of the reference or variation on the company whose appointment is mentioned in the reference or variation; and
- (b) publish particulars of the reference or variation in such manner as it considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.

(5) It shall be the duty of the Authority, for the purpose of assisting the Competition Commission in carrying out an investigation on a reference under this Article or in carrying out functions under Article 26, to give to the Commission—

- (a) any information in the Authority's possession which relates to matters falling within the scope of the investigation or the carrying out of those functions, and which is either—
  - (i) requested by the Commission for that purpose; or
  - (ii) information which, in the Authority's opinion, it would be appropriate for that purpose to give to the Commission without any such request; and
- (b) any other assistance which the Commission may require, and which it is within the Authority's power to give, in relation to any such matters;

and the Commission, for the purpose of carrying out any such investigation or such functions, shall take account of any information given to them for that purpose under this paragraph.

(6) In determining for the purposes of this Article whether any particular matter operates, or may be expected to operate, against the public interest, the Competition Commission shall have regard to the matters as respects which duties are imposed on the Department and the Authority by Part II.

### References under Article 21: time limits

**22.—**(1) Every reference under Article 21 shall specify a period (not longer than 6 months beginning with the date of the reference) within which a report on the reference is to be made.

(2) A report of the Competition Commission on a reference under Article 21 shall not have effect (and no action shall be taken in relation to it under Article 25) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Authority under paragraph (3).

(3) The Authority may, if it has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than 6 months.

(4) No more than one extension is possible under paragraph (3) in relation to the same reference.

(5) The Authority shall, in the case of an extension made by it under paragraph (3)—

- (a) publish that extension in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
- (b) send a copy of what has been published by the Authority under sub-paragraph (a) to the company whose appointment is mentioned in the reference.

### References under Article 21: powers of investigation

**23.—**(1) The following sections of Part 3 of the Enterprise Act shall apply, with the modifications mentioned in paragraphs (2) and (3), for the purposes of references under Article 21 as they apply for the purposes of references under that Part—

- (a) section 109 (attendance of witnesses and production of documents etc.);
- (b) section 110 (enforcement of powers under section 109: general);
- (c) section 111 (penalties);
- (d) section 112 (penalties: main procedural requirements);
- (e) section 113 (payments and interest by instalments);
- (f) section 114 (appeals in relation to penalties);
- (g) section 115 (recovery of penalties); and
- (h) section 116 (statement of policy).

(2) Section 110 shall, in its application by virtue of paragraph (1), have effect as if—

- (a) subsection (2) were omitted; and
- (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.

(3) Section 111(5)(b)(ii) shall, in its application by virtue of paragraph (1), have effect as if—

- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
- (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
- (c) the words “by this Part” were omitted.

(4) Provisions of Part 3 of the Enterprise Act which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of paragraph (1), have effect in relation to those sections as applied by virtue of that paragraph.

(5) Accordingly, corresponding provisions of this Order shall not have effect in relation to those sections as applied by virtue of that paragraph.

## Reports on modification references

24.—(1) In making a report on a reference under Article 21, the Competition Commission—

- (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of its reasons for those conclusions as, in its opinion, is expedient for facilitating a proper understanding of those questions and of its conclusions;
- (b) where it concludes that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and
- (c) where it concludes that any adverse effects so specified could be remedied or prevented by modifications of the conditions of a company's appointment under this Chapter, shall specify in the report modifications by which those effects could be remedied or prevented.

(2) For the purposes of Article 25, a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998 (c. 41).

(3) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under Article 21 as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.

(4) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under Article 21.

(5) In making any report on a reference under Article 21 the Competition Commission must have regard to the following considerations before disclosing any information.

(6) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.

(7) The second consideration is the need to exclude from disclosure (so far as practicable)—

- (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or
- (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.

(8) The third consideration is the extent to which the disclosure of the information mentioned in paragraph (7)(a) or (b) is necessary for the purposes of the report.

(9) A report of the Competition Commission on a reference under Article 21 shall be made to the Authority.

(10) Subject to paragraph (11), the Authority—

- (a) shall, on receiving such a report, send a copy of it to the company to whose appointment under this Chapter the report relates and to the Department; and
- (b) shall, not less than 14 days after that copy is received by the Department, publish another copy of that report in such manner as the Authority considers appropriate for bringing the report to the attention of persons likely to be affected by it.

(11) If it appears to the Department that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, it may, before the end of the period of 14 days mentioned in sub-paragraph (b) of paragraph (10), direct the Authority to exclude that matter from every copy of the report to be published by virtue of that sub-paragraph; and the Authority shall comply with any such direction.

## Modifications following report

25.—(1) Where a report of the Competition Commission on a reference under Article 21—

- (a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest;
- (b) specifies effects adverse to the public interest which those matters have or may be expected to have;
- (c) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the conditions of a company's appointment under this Chapter; and
- (d) specifies modifications by which those effects could be remedied or prevented,

the Authority shall, subject to the following provisions of this Article, make such modifications of the conditions of that appointment as appear to the Authority requisite for the purpose of remedying or preventing the adverse effects specified in the report.

(2) Before making modifications under this Article, the Authority shall have regard to the modifications specified in the report.

(3) Before making modifications under this Article, the Authority shall give notice—

- (a) stating that it proposes to make the modifications and setting out their effect;
- (b) stating the reasons why it proposes to make the modifications; and
- (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(4) A notice under paragraph (3) shall be given—

- (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications; and
- (b) by serving a copy of the notice on the company whose appointment it is proposed to modify.

(5) After considering any representations or objections made in response to proposals set out in a notice under paragraph (3), the Authority shall give notice to the Competition Commission—

- (a) setting out the modifications it proposes to make to remedy or prevent the adverse effects specified in the report; and
- (b) stating the reasons for making the modifications.

(6) The Authority shall include with the notice under paragraph (5) a copy of any representations or objections received in relation to the notice under paragraph (3).

(7) If the period of 4 weeks from the date on which the notice under paragraph (5) is given elapses without a direction under Article 26(1)(a) having been given to it, the Authority shall—

- (a) make the modifications set out in the notice; or
- (b) if a direction under Article 26(1)(b) has been given, make the modifications which are not specified in the direction.

(8) The Authority shall not under this Article make any modification of any provisions of a company's appointment under this Chapter which—

- (a) are contained in that appointment for the purposes of Article 14(4)(d); or
- (b) being provisions relating to the disposal of a company's protected land, are stated in the appointment to be provisions which cannot be modified.



### **Commission's power of veto following report**

26.—(1) The Competition Commission may, within the period of 4 weeks after the date on which it is given a notice under Article 25(5), direct the Authority—

- (a) not to make the modifications set out in that notice; or
- (b) not to make such of the modifications as may be specified in the direction;

and the Authority shall comply with any such direction.

(2) The Department may, within the period of 4 weeks after the date on which the Commission is given a notice under Article 25(5) and on the application of the Commission, direct that the period for giving a direction under paragraph (1) (and, accordingly, the period mentioned in Article 25(7)) shall be extended by 14 days.

(3) The power to give a direction under paragraph (1) may only be exercised in respect of such of the modifications set out in the notice under Article 25(5)(a) as appear to the Commission not to be the modifications which are requisite for the purpose of remedying or preventing all or any of the adverse effects specified in the report as effects which could be remedied or prevented by modifications.

(4) If the Commission gives a direction under paragraph (1), it—

- (a) shall give notice setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it; and
- (b) shall itself make such modifications as appear to it to be requisite for the purpose of remedying or preventing—
  - (i) if the direction was given under paragraph (1)(a), the adverse effects specified in the report as effects which could be remedied or prevented by modifications;
  - (ii) if the direction was given under paragraph (1)(b), such of those adverse effects as are not remedied or prevented by the modifications made by the Authority under Article 25(7)(b).

(5) In exercising its power under paragraph (4)(b), the Commission shall have regard to the matters to which the Authority is required to have regard when determining the conditions of a company's appointment.

(6) Before making modifications under paragraph (4)(b) the Commission shall give notice—

- (a) stating that it proposes to make the modifications and setting them out;
- (b) stating the reason why it proposes to make them;
- (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(7) A notice under paragraph (4)(a) or (6) shall be given—

- (a) by publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications; and
- (b) by serving a copy on the Authority and the company whose conditions of appointment it is proposed should be modified.

(8) The Commission may not make any modification under this Article which the Authority could not make under Article 25.

(9) After making modifications under this Article the Commission shall publish a notice stating that the modifications have been made and setting them out, with the reasons for making them.

### **Commission's power of veto following report: supplementary**

27.—(1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under paragraph (4)(a), (6) or (9) of Article 26.

(2) In giving any notice under paragraph (4)(a) or (6) of Article 26, or publishing any notice under paragraph (9) of that Article, the Competition Commission must have regard to the following considerations before disclosing any information.

(3) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.

(4) The second consideration is the need to exclude from disclosure (so far as practicable)—

- (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or
- (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.

(5) The third consideration is the extent to which the disclosure of the information mentioned in paragraph (4)(a) or (b) is necessary for the purposes of the notice.

(6) The following sections of Part 3 of the Enterprise Act shall apply, with the modifications mentioned in paragraphs (7) and (8), for the purposes of any investigation by the Commission for the purposes of the exercise of its functions under Article 26, as they apply for the purposes of any investigations on references under that Part—

- (a) section 109 (attendance of witnesses and production of documents etc);
- (b) section 110 (enforcement of powers under section 109: general);
- (c) section 111 (penalties);
- (d) section 112 (penalties: main procedural requirements);
- (e) section 113 (payments and interest by instalments);
- (f) section 114 (appeals in relation to penalties);
- (g) section 115 (recovery of penalties); and
- (h) section 116 (statement of policy).

(7) Section 110 shall, in its application by virtue of paragraph (6), have effect as if—

- (a) subsection (2) were omitted;
- (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the publication by the Commission of a notice under Article 26(9) of the Water and Sewerage Services (Northern Ireland) Order 2006 in connection with the reference concerned or, if no direction has been given by the Commission under Article 26(1) of that Order in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period”; and
- (c) in subsection (9) the words from “or section” to “section 65(3))” were omitted.

(8) Section 111(5)(b) shall, in its application by virtue of paragraph (6), have effect as if for sub-paragraph (ii) there were substituted—

- “(ii) if earlier, the day on which a notice is published by the Commission under Article 26(9) of the Water and Sewerage Services (Northern Ireland) Order 2006 in connection with the reference concerned or, if no direction is given by the Commission under Article 26(1) of that Order in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.”

(9) Provisions of Part 3 of the Enterprise Act which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of paragraph (6), have effect in relation to those sections as applied by virtue of that paragraph.

(10) Accordingly, corresponding provisions of this Order shall not have effect in relation to those sections as applied by virtue of that paragraph.

### **Modification by order under other statutory provisions**

**28.**—(1) Where the OFT, the Competition Commission or (as the case may be) the Secretary of State makes a relevant order, the order may, subject to paragraph (3), also provide for the modification of the conditions of a company's appointment under this Chapter to such extent as may appear to the OFT, the Commission or (as the case may be) the Secretary of State to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

(2) In paragraph (1) "relevant order" means—

(a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act where—

(i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was carried on by a relevant undertaker; or

(ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is carried on by a relevant undertaker; or

(b) an order under section 160 or 161 of the Enterprise Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition is—

(i) the structure or an aspect of the structure of a market for the supply of goods or services by a relevant undertaker; or

(ii) the conduct of a relevant undertaker or of customers of a relevant undertaker.

(3) No modification shall be made by virtue of this Article of any provisions of a company's appointment under this Chapter which—

(a) are contained in that appointment for the purposes of Article 14(4)(d); or

(b) being provisions relating to the disposal of a company's protected land, are stated in the appointment to be provisions which cannot be modified.

(4) Expressions used in paragraph (2) and in Part 3 or (as the case may be) Part 4 of the Enterprise Act have the same meanings in that paragraph as in that Part.

### *Competition*

### **Functions of the Authority with respect to competition**

**29.**—(1) The functions to which paragraph (2) apply shall be concurrent functions of the Authority and the OFT.

(2) This paragraph applies to the functions of the OFT under Part 4 of the Enterprise Act (other than sections 166 and 171) so far as relating to commercial activities connected with the supply of water or the provision of sewerage services.

(3) The Authority shall be entitled to exercise, concurrently with the OFT, the functions of the OFT under the provisions of Part 1 of the Competition Act 1998 (c. 41) (other than sections 31D(1) to (6), 38(1) to (6) and 51), so far as relating to—

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
- (b) conduct of the kind mentioned in section 18(1) of that Act,
- (c) agreements, decisions or concerted practices of the kind mentioned in Article 81(1) of the treaty establishing the European Community, or
- (d) conduct which amounts to abuse of the kind mentioned in Article 82 of that treaty,

in relation to commercial activities connected with the supply of water or securing the supply of water or the provision or securing the provision of sewerage services.

(4) So far as necessary for the purposes of, or in connection with, the provisions of paragraph (1) and (2), references in Part 4 of the Enterprise Act to the OFT (including references in provisions of that Act applied by that Part) shall be construed as including references to the Authority (except in sections 166 and 171 of that Act and in any other provision of that Act where the context otherwise requires).

(5) So far as necessary for the purposes of, or in connection with, the provisions of paragraph (3), references in Part I of the Competition Act 1998 to the OFT are to be read as including a reference to the Authority (except in sections 31D(1) to (6), 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).

(6) Before the OFT or the Authority first exercises in relation to any matter functions which are exercisable concurrently by virtue of paragraph (1), it shall consult the other.

(7) Neither the OFT nor the Authority shall exercise in relation to any matter any functions which are exercisable concurrently by virtue of paragraph (1) if functions which are so exercisable have been exercised in relation to that matter by the other.

(8) It shall be the duty of the Authority, for the purpose of assisting the Competition Commission in carrying out an investigation on a reference made to the Commission by the Authority by virtue of paragraph (2), to give to the Commission—

- (a) any information which is in the Authority's possession and which relates to matters falling within the scope of the investigation, and which is either requested by the Commission for that purpose or is information which in the Authority's opinion it would be appropriate for that purpose to give to the Commission without any such request; and
- (b) any other assistance which the Commission may require, and which it is within the Authority's power to give, in relation to any such matters,

and the Commission shall, for the purposes of carrying out any such investigation, take into account any information given to it for that purpose under this paragraph.

(9) If any question arises as to whether paragraph (2) or (3) applies to any particular case, that question shall be referred to and determined by the Secretary of State; and no objection shall be taken to anything done under—

- (a) Part 4 of the Enterprise Act; or
- (b) Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6) and 51),

by or in relation to the Authority on the ground that it should have been done by or in relation to the OFT.

(10) Section 117 of the Enterprise Act (offence of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by the Authority by virtue of paragraph (1) as if the reference in section 117(1)(a) and (2) to the OFT included a reference to the Authority.

## CHAPTER II

### ENFORCEMENT AND INSOLVENCY

#### *Enforcement orders*

#### **Orders for securing compliance with certain provisions**

**30.**—(1) Subject to paragraph (2) and Articles 31 and 32, where in the case of any company holding an appointment under Chapter I an enforcing authority is satisfied—

- (a) that that company is contravening—
  - (i) any condition of the company's appointment in relation to which it is the relevant enforcement authority; or
  - (ii) any statutory or other requirement which is enforceable under this Article and in relation to which it is the relevant enforcement authority; or
- (b) that that company is likely to contravene any such condition or requirement,

it shall by a final enforcement order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.

(2) Subject to Article 31, where in the case of any company holding an appointment under Chapter I—

- (a) it appears to an enforcement authority as mentioned in sub-paragraph (a) or (b) of paragraph (1); and
  - (b) it appears to that authority that it is requisite that a provisional enforcement order be made,
- the enforcement authority may (instead of taking steps towards the making of a final order) by a provisional enforcement order make such provision as appears to it requisite for the purpose of securing compliance with the condition or requirement in question.

(3) In determining for the purposes of paragraph (2)(b) whether it is requisite that a provisional enforcement order be made, an enforcement authority shall have regard, in particular, to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of any condition or of any statutory or other requirement enforceable under this Article, is likely to be done, or omitted to be done, before a final enforcement order may be made.

(4) Subject to Articles 31 and 32, where an enforcement authority has made a provisional enforcement order, it shall confirm the order, with or without modifications, if—

- (a) it is satisfied that the company to which the order relates—
  - (i) is contravening any condition or statutory or other requirement in relation to which it is the enforcement authority; or
  - (ii) is likely to contravene any such condition or requirement; and
- (b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition or requirement.

(5) An enforcement order—

- (a) shall require the company to which it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;
- (b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and
- (c) may be revoked at any time by the enforcement authority which made it.

(6) For the purposes of this Article and the following provisions of this Order—

- (a) the statutory and other requirements which are enforceable under this Article in relation to a company holding an appointment under Chapter I are such of the requirements of any statutory provision as—
  - (i) are imposed in consequence of that appointment; and
  - (ii) are made so enforceable by that statutory provision;
- (b) the Authority shall be the relevant enforcement authority in relation to the conditions of an appointment under Chapter I; and
- (c) the relevant enforcement authority in relation to each of the statutory and other requirements enforceable under this Article shall be—
  - (i) the Department;
  - (ii) the Authority; or
  - (iii) either of the above,
 according to whatever provision is made by the statutory provision by which the requirement is made so enforceable.

“enforcement authority” means—

- (a) the Department; or
- (b) the Authority;

“enforcement order” means a final enforcement order or a provisional enforcement order;

“final enforcement order” means an order under this Article other than a provisional enforcement order;

“provisional enforcement order” means an order under this Article which, if not previously confirmed in accordance with paragraph (4), will cease to have effect at the end of such period (not exceeding 3 months) as is determined by or under the order.

In this Article and the following provisions of this Chapter—

(8) Where any act or omission constitutes a contravention of a condition of an appointment under Chapter I or of a statutory or other requirement enforceable under this Article, the only remedies for that contravention, apart from those available by virtue of this Article, shall be those for which express provision is made by or under any statutory provision and those that are available in respect of that act or omission otherwise than by virtue of its constituting such a contravention.

### **Exceptions to the duty to enforce**

**31.—**(1) An enforcement authority shall not be required to make an enforcement order in relation to any company, or to confirm a provisional enforcement order so made, if it is satisfied—

- (a) that the contraventions were, or the apprehended contraventions are, of a trivial nature;
- (b) that, in such circumstance or subject to such conditions as may be prescribed, the company has given, and is complying with, an undertaking to take all such steps as it appears to the enforcement authority for the time being to be appropriate for the company to take for the purpose of securing or facilitating compliance with the condition or requirement in question; or
- (c) that the duties imposed on the enforcement authority by Part II preclude the making or, as the case may be, the confirmation of the order; or
- (d) that the most appropriate way of proceeding is under the Competition Act 1998 (c. 41).

(2) The requirement to comply with an undertaking given for the purposes of paragraph (1)(b) shall be treated as a statutory requirement enforceable under Article 30—

- (a) by the Department; or

- (b) with the consent of or in accordance with a general authorisation given by the Department, by the Authority.
- (3) Where an enforcement authority, having notified a company that it is considering the making in relation to the company of an enforcement order or the confirmation of a provisional enforcement order so made, is satisfied as mentioned in sub-paragraph (a), (b), (c) or (d) of paragraph (1), it shall—
  - (a) serve notice that it is so satisfied on the company;
  - (b) publish a copy of the notice in such manner as it considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
  - (c) in a case where the enforcement authority is satisfied as mentioned in the said sub-paragraph (b), serve a copy of the notice and of the undertaking given for the purposes of that sub-paragraph on the other enforcement authority.
- (4) The requirements of paragraph (3) shall not apply, in the case of any proposed order or confirmation in respect of a direction under Article 294, to the extent that the Secretary of State directs that they should not be complied with in the interests of national security.

#### **Procedure for enforcement orders**

**32.**—(1) Before making a final order or confirming a provisional order, an enforcement authority shall give notice—

- (a) stating that it proposes to make or confirm the order and setting out its effect;
- (b) setting out—
  - (i) the relevant condition or requirement for the purpose of securing compliance with which the order is to be made or confirmed;
  - (ii) the acts or omissions which, in the enforcement authority's opinion, constitute or would constitute contraventions of that condition or requirement; and
  - (iii) the other facts which, in its opinion, justify the making or confirmation of the order; and
- (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed order or proposed confirmation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(2) A notice under paragraph (1) shall be given—

- (a) by publishing the notice in such manner as the enforcement authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
- (b) by serving a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, on the company to which the order relates and on the other enforcement authority.

(3) An enforcement authority shall not make a final order with modifications, or confirm a provisional order with modifications, except—

- (a) with the consent to the modifications of the company to which the order relates; or
- (b) after complying with the requirements of paragraph (4).

(4) The requirements mentioned in paragraph (3) are that the enforcement authority shall—

- (a) serve on the company to which the order relates such notice as appears to it to be requisite of its proposal to make or confirm the order with modifications;

- (b) in that notice specify the period (not being less than 28 days from the date of the service of the notice) within which representations or objections with respect to the proposed modifications may be made; and
  - (c) consider any representations or objections which are duly made and not withdrawn.
- (5) As soon as practicable after making an enforcement order or confirming a provisional order, the enforcement authority shall—
- (a) serve a copy of the order on the company to which the order relates and on the other enforcement authority; and
  - (b) publish such a copy in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- (6) Before revoking a final enforcement order or a provisional order which has been confirmed, the enforcement authority shall give notice—
- (a) stating that it proposes to revoke the order and setting out its effect; and
  - (b) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed revocation may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (7) If, after giving a notice under paragraph (6), the enforcement authority decides not to revoke the order to which the notice relates, it shall give notice of that decision.
- (8) A notice under paragraph (6) or (7) shall be given—
- (a) by publishing the notice in such manner as the enforcement authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
  - (b) by serving a copy of the notice on the company to which the order relates and on the other enforcement authority.
- (9) The requirements of the preceding provisions of the Article shall not apply, in the case of any order in respect of contravention of a direction under Article 294, to the extent that the Secretary of State directs that they should not be complied with in the interests of national security.

### **Validity and effect of enforcement orders**

- 33.**—(1) If the company to which an enforcement order relates is aggrieved by the order and desires to question its validity on the ground—
- (a) that its making or confirmation was not within the powers of Article 30; or
  - (b) that any of the requirements of Article 32 have not been complied with in relation to it,
- the company may, within 42 days from the date of service on it of a copy of the order, make an application to the High Court under this Article.
- (2) On any such application the High Court may, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the company have been substantially prejudiced by a failure to comply with those requirements, quash the order or any provision of the order.
- (3) Except as provided by this Article, the validity of a final or provisional order shall not be questioned by any legal proceedings whatsoever.



### Effect of enforcement order

**34.—**(1) The obligation to comply with an enforcement order shall be a duty owed to any person who may be affected by a contravention of the order.

(2) Where a duty is owed under paragraph (1) to any person, any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit of that person.

(3) In any proceedings brought against a company in pursuance of paragraph (2), other than proceedings in respect of so much of a contravention of any order as consists in a breach of the duty imposed by virtue of Article 108(1)(a), it shall be a defence for the company to prove that it took all reasonable steps and exercised all due diligence to avoid contravening the order.

(4) Without prejudice to any right which any person may have by virtue of paragraph (1) to bring civil proceedings in respect of any contravention or apprehended contravention of an enforcement order, compliance with any such order shall be enforceable by civil proceedings for an injunction or for any other appropriate relief at the suit of the body which is the relevant enforcement authority in relation to the condition or requirement compliance with which was to be secured by the order.

### *Financial penalties*

#### Financial penalties

**35.—**(1) Where the Authority is satisfied in the case of any company holding an appointment under Chapter I that the company—

- (a) has contravened or is contravening any condition of the appointment; or
- (b) has failed or is failing to achieve any standard of performance prescribed under Article 66(2) or 150(2),

the Authority may, subject to Article 37, impose on the company a penalty of such amount as is reasonable in all the circumstances of the case.

(2) Where an enforcement authority is satisfied in the case of any company holding an appointment under Chapter I that the company has contravened or is contravening any statutory or other requirement which is enforceable under Article 30 and in relation to which it is the relevant enforcement authority, the enforcement authority may, subject to Article 37, impose on the company a penalty of such amount as is reasonable in all the circumstances of the case.

(3) Before imposing a penalty on a company under paragraph (1) or (2) an enforcement authority shall give notice—

- (a) stating that it proposes to impose a penalty and the amount of the penalty proposed to be imposed;
- (b) setting out the relevant condition or requirement or the standard of performance in question;
- (c) specifying the acts or omissions which, in the opinion of the enforcement authority, constitute the contravention or failure in question and the other facts which, in the opinion of the enforcement authority, justify the imposition of a penalty and the amount of the penalty proposed; and
- (d) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed penalty may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(4) Before varying any proposal stated in a notice under paragraph (3)(a) the enforcement authority shall give notice—

- (a) setting out the proposed variation and the reasons for it; and
  - (b) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed variation may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (5) As soon as practicable after imposing a penalty, the enforcement authority shall give notice—
- (a) stating that it has imposed a penalty on the company and its amount;
  - (b) setting out the condition, requirement or standard of performance in question;
  - (c) specifying the acts or omissions which, in the opinion of the enforcement authority, constitute the contravention or failure in question and the other facts which, in the opinion of the enforcement authority, justify the imposition of the penalty and its amount; and
  - (d) specifying a date, no earlier than the end of the period of 42 days from the date of service of the notice on the company, by which the penalty is required to be paid.
- (6) The company may, within 28 days of the date of service on it of a notice under paragraph (5), make an application to the enforcement authority for it to specify different dates by which different portions of the penalty are to be paid.
- (7) Any notice required to be given by an enforcement authority under this Article shall be given—
- (a) by publishing the notice in such manner as the enforcement authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them;
  - (b) by serving a copy of the notice on the company to which it relates;
  - (c) by serving a copy of the notice on the Council; and
  - (d) by serving a copy of the notice on the other enforcement authority.
- (8) Any sums received by an enforcement authority by way of penalty under this Article shall be paid into the Consolidated Fund.
- (9) The power of an enforcement authority to impose a penalty under this Article is not exercisable in respect of any contravention or failure before the coming into operation of this Article.
- (10) No penalty imposed by an enforcement authority under this Article may exceed 10 per cent. of the turnover of the company (determined in accordance with provisions specified in an order made by the Department subject to negative resolution).
- (11) An enforcement authority shall not impose a penalty under this Article where it is satisfied that the most appropriate way of proceeding is under the Competition Act 1998 (c. 41).

### **Statement of policy with respect to penalties**

- 36.**—(1) Each enforcement authority shall prepare and publish a statement of policy with respect to the imposition of penalties and the determination of their amount.
- (2) In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention or failure the enforcement authority shall have regard to its statement of policy most recently published at the time when the contravention or failure occurred.
- (3) An enforcement authority may revise its statement of policy and where it does so shall publish the revised statement.
- (4) Publication under this Article shall be in such manner as the enforcement authority considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them.

(5) An enforcement authority shall undertake such consultation as it considers appropriate when preparing or revising its statement of policy.

### **Time limits on the imposition of financial penalties**

**37.—**(1) Where no final or provisional order has been made in relation to a contravention or failure, an enforcement authority may not impose a penalty in respect of the contravention or failure later than the end of the period of 12 months from the time of the contravention or failure, unless before the end of that period—

- (a) the notice under Article 35(3) relating to the penalty is served on the company under Article 35(7); or
- (b) a notice relating to the contravention or failure is served on the company under Article 261(2).

(2) Where a final or provisional order has been made in relation to a contravention or failure, an enforcement authority may not impose a penalty in respect of the contravention or failure unless the notice relating to the penalty under Article 35(3) was served on the company under Article 35(7)—

- (a) within 3 months from the confirmation of the provisional order or the making of the final order; or
- (b) where the provisional order is not confirmed, within 6 months from the making of the provisional order.

### **Interest and payment of instalments**

**38.—**(1) If the whole or any part of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being prescribed under Article 127 of the [Judgments Enforcement \(Northern Ireland\) Order 1981 \(NI 6\)](#).

(2) If an application is made under paragraph (6) of Article 35 in relation to a penalty, the penalty is not required to be paid until the application has been determined.

(3) If the enforcement authority grants an application under that paragraph in relation to a penalty but any portion of the penalty is not paid by the date specified in relation to it by the enforcement authority under that paragraph, that authority may where it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately.

### **Appeals**

**39.—**(1) If the company on which a penalty is imposed is aggrieved by—

- (a) the imposition of the penalty;
- (b) the amount of the penalty; or
- (c) the date by which the penalty is required to be paid, or the different dates by which different portions of the penalty are required to be paid,

the company may make an application to the High Court under this Article.

(2) An application under paragraph (1) must be made—

- (a) within 42 days from the date of service on the company of a notice under Article 35(5); or
- (b) where the application relates to a decision of an enforcement authority on an application by the company under Article 35(6), within 42 days from the date the company is notified of the decision.

(3) On any such application, where the High Court considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the grounds falling within paragraph (4), that Court—

- (a) may quash the penalty;
- (b) may substitute a penalty of such lesser amount as that Court considers appropriate in all the circumstances of the case; or
- (c) in the case of an application under paragraph (1)(c), may substitute for the date or dates imposed by the enforcement authority an alternative date or dates.

(4) The grounds falling within this paragraph are—

- (a) that the imposition of the penalty was not within the power of the enforcement authority under Article 35;
- (b) that any of the requirements of paragraphs (3) to (5) or (7) of Article 35 have not been complied with in relation to the imposition of the penalty and the interests of the company have been substantially prejudiced by the non-compliance; or
- (c) that it was unreasonable of the enforcement authority to require the penalty imposed, or any portion of it, to be paid by the date or dates by which it was required to be paid.

(5) If an application is made under this Article in relation to a penalty, the penalty is not required to be paid until the application has been determined.

(6) Where the High Court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such date, as it considers just and equitable.

(7) Where the High Court specifies as a date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application under this Article it may require the payment of interest on the penalty, or portion, from that date at such rate as it considers just and equitable.

(8) Except as provided by this Article, the validity of a penalty shall not be questioned by any legal proceedings whatsoever.

### **Recovery of penalties**

**40.** Where a penalty imposed under Article 35(1) or (2), or any portion of it, has not been paid by the date on which it is required to be paid and—

- (a) no application relating to the penalty has been made under Article 39 during the period within which such an application can be made; or
- (b) an application has been made under that Article and determined,

the enforcement authority may recover from the company, as a civil debt due to it, any of the penalty and any interest which has not been paid.

### *Special administration orders*

#### **Meaning and effect of special administration order**

**41.—**(1) A special administration order is an order of the High Court made in accordance with Article 42 or 43 in relation to a company holding an appointment under Chapter I of this Part and directing that, during the period for which the order is in force, the affairs, business and property of the company shall be managed, by a person appointed by the High Court—

- (a) for the achievement of the purposes of such an order; and

- (b) in a manner which protects the respective interests of the members, creditors and customers of the company.
- (2) The purposes of a special administration order made in relation to any company shall be—
  - (a) the transfer to another company, or (as respects different parts of the area to which the company's appointment relates, or different parts of its undertaking) to two or more different companies, as a going concern, of so much of the company's undertaking as it is necessary to transfer in order to ensure that the functions which have been vested in the company by virtue of its appointment may be properly carried out; and
  - (b) the carrying out of those functions pending the making of the transfer and the vesting of those functions in the other company or companies (whether by virtue of the transfer or of an appointment or variation which replaces the former company as a relevant undertaker).
- (3) The Department may by regulations—
  - (a) make provision for applying provisions of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#) (with or without modifications) in relation to a special administration order or an application for such an order;
  - (b) make consequential or supplementary provision (including provision modifying other statutory provisions) in relation to special administration orders.
- (4) Schedule 1 shall have effect for enabling provision to be made with respect to cases in which a company is replaced by another as a relevant undertaker without an appointment or variation under Chapter I of this Part in pursuance of a special administration order.
- (5) In this Article “business” and “property” have the same meanings as in the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#).

#### **Special administration orders made on application of Department or Authority**

**42.**—(1) If, on an application made to the High Court—

- (a) by the Department; or
- (b) with the consent of the Department, by the Authority,

that Court is satisfied in relation to any company which holds an appointment under Chapter I that any one or more of the grounds specified in paragraph (2) is satisfied in relation to that company, that Court may make a special administration order in relation to that company.

- (2) The grounds mentioned in paragraph (1) are, in relation to any company—
  - (a) that there has been, is or is likely to be such a contravention by the company of any principal duty, not being a contravention in respect of which a notice has been served under paragraph (3) of Article 31, as is serious enough to make it inappropriate for the company to continue to hold its appointment;
  - (b) that there has been, is or is likely to be such a contravention by the company of the provisions of any enforcement order which—
    - (i) is not for the time being the subject-matter of proceedings brought by virtue of Article 33(1); and
    - (ii) if it is a provisional enforcement order, has been confirmed,as is serious enough to make it inappropriate for the company to continue to hold its appointment;
  - (c) that the company is or is likely to be unable to pay its debts;
  - (d) that, in a case in which DETI has certified that it would be appropriate, but for Article 43, for it to petition for the winding up of the company under Article 104A of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#) (winding-up on grounds of public interest), it would

be just and equitable, as mentioned in that Article, for the company to be wound up if it did not hold an appointment under Chapter I; or

- (e) that the company is unable or unwilling adequately to participate in arrangements certified by the Department or the Authority to be necessary by reason of, or in connection with, a proposal for the making by virtue of Article 14(4)(d) of any appointment or variation replacing a company as a relevant undertaker.

(3) Notice of any application under this Article for a special administration order shall be given forthwith to such persons and in such manner as may be prescribed by rules made under Article 359 of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#); and no such application shall be withdrawn except with the leave of the High Court.

(4) For the purposes of this Article a company is unable to pay its debts if—

- (a) it is a limited company which is deemed to be so unable under Article 103 of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#) (definition of inability to pay debts); or
- (b) it is an unregistered company which is deemed, by virtue of any of Articles 186 to 188 of that Order, to be so unable for the purposes of Article 185 of that Order (winding up of unregistered companies).

(5) In this Article “principal duty”, in relation to a company, means a requirement imposed on the company by Article 65 or 149.

#### **Power to make special administration order on winding-up petition**

**43.** On an application made to any court for the winding up of a company which holds an appointment under Chapter I —

- (a) the court shall not make a winding-up order in relation to the company; but
- (b) if the court is satisfied that it would be appropriate to make such an order if the company were not a company holding such an appointment, it shall, instead, make a special administration order in relation to the company.

#### *Restrictions on voluntary winding up and insolvency proceedings*

#### **Restrictions on voluntary winding up and insolvency proceedings**

**44.—(1)** Where a company holds an appointment under Chapter I—

- (a) the company shall not be wound up voluntarily;
- (b) no administration order or appointment of an administrator shall be made in relation to the company under Schedule B1 to the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#);
- (c) no appointment shall be made under Part IV of that Order (receivers and managers) in relation to the company; and
- (d) no other step shall be taken by any person to enforce any security over the company’s property except where that person has served 14 days’ notice of his intention to take that step on the Department and on the Authority.

(2) In this Article “security” and “property” have the same meanings as in Parts II to VII of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#).

## CHAPTER III

### CONSUMER PROTECTION: THE GENERAL CONSUMER COUNCIL

#### **The General Consumer Council: preliminary**

**45.**—(1) This Chapter confers functions on the General Consumer Council for Northern Ireland (“the Council”) in relation to consumer matters.

(2) In this Chapter—

“consumer matter” means any matter connected with the interests of consumers;

“the interests of consumers” means the interests of consumers in relation to—

- (a) the supply of water to premises by water undertakers; and
- (b) the provision of sewerage services by sewerage undertakers.

(3) In considering the interests of consumers the Council shall have regard to the interests of—

- (a) individuals who are disabled or chronically sick;
- (b) individuals of pensionable age;
- (c) individuals with low incomes; and
- (d) individuals residing in rural areas,

but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer.

(4) The Council shall carry out its functions under this Chapter in the manner which it considers is best calculated to contribute to the achievement of sustainable development.

(5) The Council shall establish a group in connection with the exercise of its functions under this Chapter.

(6) Accordingly, in paragraph 10(1) of Schedule 1 to the [General Consumer Council \(Northern Ireland\) Order 1984 \(NI 12\)](#) (“the 1984 Order”) after head (bb) there shall be inserted—

“(bbb) a group in connection with the exercise of its functions under Chapter III of Part III of the Water and Sewerage Services (Northern Ireland) Order 2006.”.

(7) Nothing in paragraph (5) or (6) or Article 9(1) or (2) of the Energy Order (establishment of group in relation to energy) affects the power conferred by paragraph 10(8) of Schedule 1 to the 1984 Order (power by order to reduce number of groups); and accordingly an order under paragraph 10(8) of that Schedule may repeal paragraphs (5) and (6) and Article 9(1) and (2) of the Energy Order.

(8) Nothing in Article 4 of the 1984 Order authorises or requires the Council to carry out any function in relation to a consumer matter otherwise than in accordance with this Chapter.

(9) The Council shall send to the Department a copy of every annual report prepared by it under paragraph 12 of Schedule 1 to the 1984 Order.

#### **Forward work programme of the Council**

**46.**—(1) The Council shall, before each financial year, publish a document (the “forward work programme”) containing a general description of the projects which it plans to undertake during the year in the exercise of its functions under this Chapter (other than projects comprising routine activities in the exercise of those functions).

(2) That description shall include the objectives of each project.

(3) The forward work programme for any year shall also include an estimate of the overall expenditure which the Council expects to incur during the year in the exercise of its functions under this Chapter.

(4) The forward work programme prepared under this Article may, if the Council so decides, be combined in a single programme with the forward work programme of the Council prepared under Article 10 of the Energy Order.

(5) Before publishing the forward work programme for any year (other than one which is combined as mentioned in paragraph (4)), the Council shall give notice—

- (a) containing a draft of the forward work programme; and
- (b) specifying the time within which representations or objections to the proposals contained in it may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(6) The notice under paragraph (5) shall be published by the Council in such manner as it considers appropriate for the purpose of bringing the matters contained in it to the attention of persons likely to be affected by them.

(7) The Council shall send a copy of any notice given by it under paragraph (5) to the Authority and the Department.

#### **Co-operation between the Council and other authorities**

**47.—**(1) This Article imposes duties on—

- (a) the Authority and the Council;
- (b) the Council and the Department;

but those duties extend only to their respective functions under this Order.

(2) It shall be the duty of the bodies mentioned in each sub-paragraph of paragraph (1) to make arrangements with a view to securing—

- (a) co-operation and the exchange of information between them; and
- (b) the consistent treatment of matters which affect both of them.

(3) As soon as practicable after agreement is reached on any arrangements required by this Article, the parties shall prepare a memorandum setting them out.

(4) Arrangements under this Article shall be kept under review by the parties.

(5) As soon as practicable after agreement is reached on any changes to arrangements under this Article, the parties shall revise their memorandum.

(6) Parties to arrangements required by this Article shall send a copy of their memorandum, and any revised memorandum, to each other body mentioned in paragraph (1) who is not a party to the arrangements set out in the memorandum (or revised memorandum).

(7) The Department shall lay a copy of every memorandum or revised memorandum under this Article before the Assembly.

#### **Acquisition and review of information**

**48.—**(1) The Council shall obtain and keep under review—

- (a) information about consumer matters; and
- (b) information about the views of consumers on such matters.

(2) Where the Authority is required by any provision of this Order to publish a notice or any other document, it shall send a copy of the document to the Council.

#### **Provision of advice and information to public authorities and other persons**

**49.** Subject to Article 57, the Council may—



- (a) make proposals, or provide advice and information, about consumer matters; and
- (b) represent the views of consumers on such matters,

to public authorities, companies holding an appointment under Chapter I and other persons whose activities may affect the interests of consumers.

#### **Provision of information to consumers**

**50.**—(1) The Council may provide information to consumers about consumer matters in such form as appears to the Council to be most useful to the recipients.

(2) That power may be exercised by—

- (a) publishing information in any manner the Council thinks appropriate for the purpose of bringing it to the attention of those likely to be interested; or
- (b) furnishing information to any consumer (whether in response to a request or otherwise).

#### **Power to publish information and advice about consumer matters**

**51.** Subject to Article 57, if it appears to the Council that the publication of any advice and information about consumer matters (including information about the views of consumers on such matters) would promote the interests of consumers, the Council may publish that advice or information in such manner as it thinks fit.

#### **Provision of information to the Council**

**52.**—(1) The Council may direct—

- (a) the Authority; or
- (b) a company holding an appointment under Chapter I,

to supply to it, in such form as it may reasonably specify, such information specified or described in the direction as it may require for the purpose of exercising its functions under this Chapter.

(2) A body to which a direction under this Article is given shall comply with it as soon as reasonably practicable.

(3) Before giving a direction under this Article and in specifying the form in which any information is to be supplied, the Council shall have regard to the desirability of minimising the costs, or any other detriment, to the body to which the direction is given.

(4) If the Authority fails to comply with the direction under this Article it shall, if so required by the Council, give notice to the Council of the reasons for its failure.

(5) Subject to Article 57, the Council may publish a notice given to it under paragraph (4).

#### **Provision of information by the Council**

**53.**—(1) The Authority or the Department may direct the Council to supply to it, in such form as it may reasonably specify, such information specified or described in the direction as the Authority or the Department may require for the purpose of exercising its functions under this Order.

(2) The Council shall comply with a direction under this Article as soon as reasonably practicable.

(3) Where the Council fails to comply with a direction under this Article it shall give to the body which gave the direction notice of its reason for the failure, and that body may publish that notice in such manner as it considers appropriate.

(4) A body publishing a notice under this Article shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body

of persons (corporate or unincorporate), where it considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body.

### **Articles 52 and 53: supplementary**

**54.—**(1) The Department may make regulations prescribing—

- (a) descriptions of information which a body to which a direction is given under Article 52 or 53 may refuse to supply; or
- (b) circumstances in which such a body may refuse to comply with a direction given under either of those Articles.

(2) The Council may, if no person is prescribed for the purpose under paragraph (3), refer a failure by a company holding an appointment under Chapter I to comply with a direction under Article 52 to the Authority.

(3) The Department may make regulations for the purpose of enabling a failure to comply with a direction under Article 52 or 53 to be referred by the body which gave the direction to such person (other than the Authority) as may be prescribed by the regulations.

(4) A person to whom such a failure is referred (whether under paragraph (2) or regulations under paragraph (3)) shall—

- (a) consider any representations made by either party;
- (b) determine whether the person failing to comply with the direction is entitled to refuse to do so, and, if not, order him to comply with the direction; and
- (c) give notice of his determination and any order under sub-paragraph (b), with reasons, to both parties.

(5) The duty of a company holding an appointment under Chapter I to comply with an order under this Article shall be enforceable by the Authority under Article 30.

(6) Subject to Article 57, a notice under paragraph (4) may be published by either party to the reference.

### **Consumer complaints**

**55.—**(1) This Article applies to a complaint which any person (“the complainant”) has against a relevant undertaker in relation to any matter connected with the functions of that undertaker.

(2) Where a complaint to which this Article applies (other than one appearing to the Council to be frivolous or vexatious) is referred to the Council by or on behalf of the complainant, the Council shall (subject to paragraph (8)) investigate the complaint for the purpose of determining whether it is appropriate to take any action under paragraph (9).

(3) Where it appears to the Council that the complaint is one the Authority would be required to investigate under Article 243, the Council shall refer the complaint to the Authority.

(4) Where it appears to the Council that the complaint relates to a matter in respect of which a function under Article 30 or 35 is or may be exercisable by any person, the Council shall (unless it considers that that person already has notice of the matter) refer the matter to that person.

(5) Where it appears to the Council that the complaint relates to a matter which constitutes or might constitute an offence under this Order, the Council shall refer the matter to the Department.

(6) Where it appears to the Council that the complaint relates to a matter which constitutes a dispute of a kind which can be referred to the Authority for determination under any provision of this Order, the Council shall, if the complainant consents, refer the matter to the Authority.

(7) A referral under paragraph (6) shall have effect for the purposes of Article 61 as if it were a referral by the complainant of a dispute for determination by the Authority.

(8) The Council is not required to investigate any matter if it appears to the Council that—

- (a) it is unlikely that the complaint could be resolved by action taken by the relevant undertaker;
- (b) the relevant undertaker has not been given a reasonable opportunity to deal with the complaint; or
- (c) in a case mentioned in paragraph (3), (4), (5) or (6), it is inappropriate to do so.

(9) Where it appears to the Council to be appropriate to do so with a view to assisting in reaching a satisfactory resolution of a complaint referred to it under this Article, the Council shall make representations on behalf of the complainant to the relevant undertaker about anything to which the complaint relates.

(10) After investigating a complaint the Council may make a report to the Authority or the Department.

(11) A report under paragraph (10) may include information about—

- (a) any representations made by the Council under paragraph (9); and
- (b) the response of the relevant undertaker to the complaint or any such representations.

(12) No report under paragraph (10) or information about a complaint referred to the Council under this Article, from which the complainant may be identified, shall be published or disclosed by the Council, the Authority or the Department in the exercise of any power under this Order without the consent of the complainant.

(13) Where a representation made to the Authority or the Department about any matter (other than a representation appearing to it be frivolous or vexatious) appears to that body—

- (a) to be about a matter which is or amounts to a complaint to which this Article applies; and
- (b) to have been made by or on behalf of the complainant,

that body shall refer the matter to the Council.

### **Power of the Council to investigate other matters**

**56.**—(1) The Council may investigate any matter (not being a matter which it is its duty to investigate under this Part) which appears to it to be a matter relating to the interests of consumers.

(2) Where the Council has investigated a matter under this Article it may make a report on that matter to the Authority, the Department, the OFT or any other public authority whose functions appear to the Council to be exercisable in relation to that matter.

(3) Subject to Article 57, the Council may—

- (a) send a report on any matter investigated under this Article to any person who appears to the Council to have an interest in that matter; and
- (b) publish any such report in such manner as the Council thinks appropriate.

### **Restrictions on disclosure of information by the Council**

**57.**—(1) This Article applies to the functions of the Council—

- (a) in preparing so much of its annual report under paragraph 12 of Schedule 1 to the 1984 Order as relates to its functions under this Chapter;
- (b) in exercising its functions under Article 49 or 50;
- (c) in publishing anything under Article 51;
- (d) in publishing a notice under Article 52(5) or 54(6); and
- (e) in sending or publishing a report under Article 56(3).

(2) Subject to paragraph (7), information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be disclosed in the exercise of a function to which this Article relates unless one or more of sub-paragraphs (a) to (c) of paragraph (3) applies to the information.

(3) Information relating to a particular individual or body may be disclosed if—

- (a) the individual or body has consented to the disclosure;
- (b) it is information that is available to the public from some other source; or
- (c) it is not information the disclosure of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.

(4) Before deciding to disclose any information relating to a particular individual or body in pursuance of paragraph (3)(c) above, the Council shall—

- (a) consult that individual or body; and
- (b) have regard to any opinion expressed by the Authority as to the application of paragraph (3) (c) to the information or as to the desirability or otherwise of its disclosure;

and sub-paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.

(5) Subject to paragraph (7), the Council shall not in the exercise of any function to which this Article applies disclose any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.

(6) In considering whether information relates to any matter as mentioned in paragraph (5), the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Department or the Director of Public Prosecutions for Northern Ireland.

(7) Where this Article applies by virtue of paragraph (1)(b), paragraphs (2) to (5) do not apply to a disclosure of information which is made to the Authority, the Department, the Competition Commission or any other public authority.

(8) The disclosure by the Council of information in the exercise of a function to which this Article applies does not contravene Article 265 (restriction on disclosure of information).

(9) In this Article “disclosure” includes publication.

### **Duty to consult the Council**

**58.**—(1) It shall be the duty of the Authority to consult the Council in relation to the exercise of each of its functions, except where—

- (a) the Council has indicated to the Authority (whether specifically or generally) that it does not wish to be consulted; or
- (b) the Authority considers that it would be clearly inappropriate to consult the Council.

(2) That duty is in addition to any duty on the Authority to consult the Council which is provided for elsewhere.

### **Provision of statistical information about complaints**

**59.**—(1) It shall be the duty of the Council to publish, in such form and manner and with such frequency as it thinks appropriate, such statistical information as it considers appropriate in relation to—

- (a) complaints made by consumers about any matter relating to the activities of relevant undertakers; and

(b) the handling of such complaints.

(2) In paragraph (1) “complaints” includes complaints made directly to relevant undertakers (or anyone carrying on activities on their behalf) and complaints to the Authority, the Council or the Department.

## CHAPTER IV

### MISCELLANEOUS AND SUPPLEMENTARY

#### *Miscellaneous*

#### **General duty of the Authority to keep matters under review**

**60.**—(1) It shall be the duty of the Authority, so far as it appears to it practicable to do so, to keep under review the carrying on both in Northern Ireland and elsewhere of activities connected with the matters in relation to which water undertakers or sewerage undertakers carry out functions.

(2) It shall also be the duty of the Authority, so far as it appears to it practicable to do so, to collect information with respect to—

- (a) the carrying out by companies appointed under Chapter I of the functions of relevant undertakers; or
- (b) any such company,

with a view to its becoming aware of, and ascertaining the circumstances relating to, matters with respect to which any power or duty is conferred or imposed on it by or under any statutory provision.

(3) The Department may give general directions indicating considerations to which the Authority should have particular regard in determining the order of priority in which matters are to be brought under review in performing its duty under paragraph (1) or (2); and it shall be the duty of the Authority to comply with any such directions.

(4) It shall be the duty of the Authority, where either it considers it expedient or it is requested by the Department or the OFT to do so, to give information, advice and assistance to the Department or the OFT with respect to any matter relating to—

- (a) the functions of either description of relevant undertaker; or
- (b) the carrying out of any such functions by a company holding an appointment under Chapter I.

#### **Determination of disputes by the Authority**

**61.**—(1) In this Article “relevant dispute” means a dispute which, by virtue of any provision of this Order, may be referred to the Authority for determination under this Article.

(2) The practice and procedure to be followed in connection with the reference to the Authority of any relevant dispute shall be such as it considers appropriate.

(3) Where the Authority determines any dispute under this Article it shall give its reasons for reaching its decision with respect to the dispute.

(4) On making a determination under this Article the Authority may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the Authority) as it considers appropriate.

(5) A determination under this Article—

- (a) shall be final; and

- (b) shall be enforceable as if it were a money judgment (within the meaning of the [Judgments Enforcement \(Northern Ireland\) Order 1981 \(NI 6\)](#)), in so far as it includes such provision as to costs or expenses as is mentioned in paragraph (4).

(6) The Authority shall not determine any relevant dispute which is the subject of proceedings before, or with respect to which judgment has been given by, any court.

(7) In including in any determination under this Article any provision as to costs or expenses, the Authority shall have regard to the conduct and means of the parties and any other relevant circumstances.

### **Remuneration and standards of performance**

**62.**—(1) This Article applies to any company holding an appointment under Chapter I.

(2) As soon as reasonably practicable after the end of each financial year of the company it must make a statement to the Authority—

- (a) disclosing whether or not remuneration has been paid or become due during that financial year to the directors of the company as a result of arrangements falling within paragraph (3); and
- (b) where such remuneration has been paid or become due, describing the arrangements and the remuneration.

(3) Arrangements fall within this paragraph if they are arrangements for linking the remuneration of the directors of the company to standards of performance in connection with the carrying out by the company of the functions of a relevant undertaker.

(4) A description under paragraph (2)(b) must include in particular—

- (a) a statement of when the arrangements were made;
- (b) a description of the standards of performance in question;
- (c) an explanation of the means by which the standards of performance are assessed; and
- (d) an explanation of how the remuneration was calculated.

(5) The statement required by paragraph (2) must also state—

- (a) whether or not there are in force in respect of the financial year during which the statement is made arrangements falling within paragraph (3); or
- (b) if not, whether the company intends that such arrangements will be in force at some time during that financial year,

and if there are, or it is intended that there will be, such arrangements in force the statement must describe those arrangements.

(6) A description under paragraph (5) must—

- (a) include in particular the matters listed in paragraph (4)(a), (b) and (c); and
- (b) where the arrangements described are different from any arrangements described under paragraph (2)(b), state the likely effect of those differences on the remuneration of each director of the company.

(7) The statement required by paragraph (2) must be made to the Authority in such manner as may be required by the Authority.

(8) The statement required by paragraph (2)—

- (a) shall be published by the company making the statement in such manner as it reasonably considers will secure adequate publicity for it; and
- (b) may be published by the Authority in such manner as it may consider appropriate.

(9) The duty of a company under this Article applies in respect of any person who has at any time been a director of the company.

(10) In this Article—

“remuneration” in relation to a director of a company—

(a) means any form of payment, consideration or other benefit (including pension benefit), paid or due to or in respect of the director; and

(b) includes remuneration in respect of any of his services while a director of the company;

“standards of performance”, in relation to any company, include any standards which are—

(a) set by or under any conditions of the company’s appointment under Chapter I;

(b) contained in or prescribed by regulations made under Article 66(1)(b) or (2) or Article 150(1)(b) or (2); or

(c) set or agreed to by the company.

(11) Any requirement imposed by this Article shall be treated as a statutory requirement enforceable under Article 30 by the Authority.

### **Procedure for dealing with complaints**

**63.**—(1) Each relevant undertaker shall establish a procedure for dealing with complaints made by its customers in connection with the supply of water or, as the case may be, the provision of sewerage services.

(2) No such procedure shall be established, and no modification of such a procedure shall be made, unless—

(a) the relevant undertaker has consulted the Council; and

(b) the proposed procedure or modification has been approved by the Authority.

(3) The relevant undertaker shall—

(a) publicise the procedure in such manner as may be approved by the Authority; and

(b) send a description of the procedure, free of charge, to any person who asks for one.

(4) The Authority may give a direction to a relevant undertaker requiring the undertaker to review its procedure or the manner in which the procedure operates.

(5) A direction under paragraph (4)—

(a) may specify the manner in which the review is to be conducted; and

(b) shall require a written report of the review to be made to the Authority.

(6) Where the Authority receives a report under paragraph (5)(b), it may, after consulting the relevant undertaker, direct the undertaker to make such modifications of—

(a) the procedure; or

(b) the manner in which the procedure operates,

as may be specified in the direction.

(7) Paragraph (2) does not apply to any modification made in compliance with a direction under paragraph (6).

(8) The duty of a relevant undertaker to comply with paragraph (1) and with any direction given to it under paragraph (4) or (6) shall be enforceable by the Authority under Article 30.

(9) Where the Authority is considering whether to exercise its powers under paragraph (4) or (6) in relation to a relevant undertaker, it shall be the duty of that undertaker to give the Authority

such information as the Authority may reasonably require for the purpose of assisting it in coming to a decision.

(10) Article 260 shall have effect, with the necessary modifications, in relation to information which the Authority requires for that purpose as it has effect in relation to information which the Department requires for purposes mentioned in paragraph (1) of that Article.

### *Supplementary*

### **Interpretation of Part III**

**64.**—(1) References in this Part to an appointment or variation replacing a company as a relevant undertaker are references to the following—

- (a) the appointment of a company to be the water undertaker or sewerage undertaker for any area which is or includes the whole or any part of any area for which another company already holds an appointment as water undertaker or, as the case may be, sewerage undertaker; or
- (b) a variation by virtue of which the area for which a company holds an appointment under Chapter I is modified so as to include the whole or any part of an area for which another company already holds an appointment as water undertaker or, as the case may be, sewerage undertaker.

(2) For the purposes of this Part premises in a part of an area are served by a company holding an appointment under Chapter I—

- (a) in relation to an appointment or variation by virtue of which that company would be replaced as the water undertaker for that part of that area, if those premises are supplied with water by means of a connection with a distribution main of that company; and
- (b) in relation to an appointment or variation by virtue of which that company would be replaced as the sewerage undertaker for that part of that area, if those premises are drained by means of a relevant sewer or drain.

(3) In this Article—

- (a) “distribution main” means a water main that is not a trunk main; and
- (b) “relevant sewer or drain”, in relation to any appointment or variation which would replace a company as a sewerage undertaker, means any of the following—
  - (i) a public sewer or lateral drain vested in that company;
  - (ii) a sewer or lateral drain in relation to which that company has made a declaration of vesting under Article 159 which has not yet taken effect;
  - (iii) a sewer or lateral drain in relation to which that company has entered into an agreement under Article 161.

(4) In this Part “the 1984 Order” means the [General Consumer Council \(Northern Ireland\) Order 1984 \(NI 12\)](#).



**PART IV**  
**WATER SUPPLY**  
**CHAPTER I**  
**GENERAL DUTIES OF WATER UNDERTAKERS**

*General water supply duties*

**General duty to maintain water supply system, etc.**

**65.**—(1) It shall be the duty of every water undertaker to develop and maintain an efficient and economical system of water supply within its area and to ensure that all such arrangements have been made—

- (a) for providing supplies of water to premises in that area and for making such supplies available to persons who demand them; and
- (b) for maintaining, improving and extending the water undertaker's water mains and other pipes,

as are necessary for securing that the undertaker is and continues to be able to meet its obligations under this Part.

(2) The duty of a water undertaker under this Article shall be enforceable under Article 30—

- (a) by the Department; or
- (b) with the consent of or in accordance with a general authorisation given by the Department, by the Authority.

(3) The obligations imposed on a water undertaker by the following Chapters of this Part, and the remedies available in respect of contraventions of those obligations, shall be in addition to any duty imposed or remedy available by virtue of any provision of this Article or Article 66 and shall not be in any way qualified by any such provision.

**Standards of performance in connection with water supply**

**66.**—(1) For the purpose—

- (a) of facilitating the determination of the extent to which breaches of the obligations imposed by the following provisions of this Part are to amount to breaches of the duty imposed by Article 65; or
- (b) of supplementing that duty by establishing overall standards of performance in relation to that duty,

the Department may, in accordance with Article 69, by regulations provide for contraventions of such requirements as may be prescribed to be treated for the purposes of this Order as breaches of that duty.

(2) The Department may, in accordance with Article 69, by regulations prescribe such standards of performance in connection with the provision of supplies of water as, in its opinion, ought to be achieved in individual cases.

(3) Regulations under paragraph (2) may provide that if a water undertaker fails to meet a prescribed standard it shall pay such amount as may be prescribed to any person who is affected by the failure and is of a prescribed description.

(4) Without prejudice to the generality of the power conferred by paragraph (2), regulations under that paragraph may—

- (a) include in a standard of performance a requirement for a water undertaker, in prescribed circumstances, to inform a person of his rights by virtue of any such regulations;
  - (b) provide for any dispute under the regulations to be referred by either party to the dispute to the Authority;
  - (c) make provision for the procedure to be followed in connection with any such reference and for the Authority's determination on such a reference to be enforceable in such manner as may be prescribed;
  - (d) prescribe circumstances in which a water undertaker is to be exempted from requirements of the regulations.
- (5) Where the Authority determines any dispute in accordance with regulations under this Article it shall, in such manner as may be specified in the regulations, give its reasons for reaching its decision with respect to the dispute.

### **Information with respect to levels of performance**

- 67.**—(1) The Authority shall from time to time collect information with respect to—
- (a) the compensation paid by water undertakers under regulations under Article 66(2); and
  - (b) the levels of overall performance achieved by water undertakers in connection with the provision of water supplies.
- (2) At such times as the Authority may direct, each water undertaker shall give the following information to the Authority—
- (a) as respects each standard prescribed by regulations under Article 66(2), the number of cases in which compensation was paid and the aggregate amount or value of that compensation; and
  - (b) as respects each standard established by regulations under Article 66(1)(b), such information with respect to the level of performance achieved by the undertaker as may be prescribed.
- (3) A water undertaker who without reasonable excuse fails to do anything required of him by paragraph (2) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) The Authority shall, at least once in every year, arrange for the publication, in such form and in such manner as it considers appropriate, of such of the information collected by or given to it under this Article as it may appear to the Authority expedient to give to customers or potential customers of water undertakers.
- (5) In arranging for the publication of any such information the Authority shall have regard to the need for excluding, so far as practicable—
- (a) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual; and
  - (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that body.

### **Information to be given to customers about overall performance**

- 68.**—(1) Each water undertaker shall, in such form and manner and with such frequency as the Authority may direct, take steps to inform its customers of—

- (a) the standards of overall performance established under Article 66(1)(b) which are applicable to that undertaker; and
  - (b) that undertaker's level of performance as respects each of those standards.
- (2) In giving any such direction, the Authority shall not specify a frequency of less than once in every period of 12 months.
- (3) The duty of a water undertaker to comply with this Article shall be enforceable by the Authority under Article 30.

### **Procedure for making regulations under Article 66**

**69.**—(1) The Department shall not make any regulations under Article 66 unless—

- (a) the Authority has made to the Department a written application complying with paragraph (3);
  - (b) the Department is satisfied that a copy of the application has been served by the Authority on—
    - (i) every water undertaker specified in the application; and
    - (ii) persons or bodies appearing to the Department to be representative of persons likely to be affected by the regulations;
  - (c) such period as the Department considers appropriate has been allowed for the making—
    - (i) by the Authority; and
    - (ii) by any affected water undertaker or person or body on whom a copy of the application has been served under sub-paragraph (b)(ii),of representations or objections with respect to the Authority's proposals and any modifications proposed by the Department; and
  - (d) the Department has considered the summary mentioned in paragraph (3)(c), the Authority's reasons for its proposals and every representation or objection which has been duly made with respect to those proposals, or any proposed modifications of those proposals, and has not been withdrawn.
- (2) Before making an application to the Department under this Article the Authority shall arrange for such research as it considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and consider the results.
- (3) An application made by the Authority to the Department complies with this paragraph if it—
- (a) sets out draft provisions proposed by the Authority for inclusion in regulations under Article 66;
  - (b) specifies the water undertaker or undertakers in relation to which it is proposed those provisions should apply;
  - (c) is accompanied by a written summary of the results of the research carried out in accordance with paragraph (2); and
  - (d) summarises the Authority's reasons for its proposals.
- (4) The Department shall not make any regulations under Article 66 except where—
- (a) the only provisions of the regulations are the provisions proposed by the Authority in its application or those provisions with such modifications as the Department considers appropriate; and
  - (b) each of the modifications (if any) of the Authority's proposals to which effect is given by the regulations is a modification the proposal to make which has been notified—
    - (i) to the Authority; and

- (ii) to any water undertaker appearing to the Department to be likely to be affected by the modifications.

*Water resource management and drought plans*

**Water resources management plans: preparation and review**

**70.**—(1) It shall be the duty of each water undertaker to prepare and maintain a water resources management plan.

(2) A water resources management plan is a plan for how the water undertaker will manage and develop water resources so as to be able, and continue to be able, to meet its obligations under this Part.

(3) A water resources management plan shall address in particular—

- (a) the water undertaker's estimate of the quantities of water required to meet those obligations;
- (b) the measures which the water undertaker intends to take or continue for the purpose set out in paragraph (2);
- (c) the likely sequence and timing for implementing those measures; and
- (d) such other matters as the Department may specify in directions.

(4) The procedure for preparing a water resources management plan (including a revised plan) is set out in Article 71.

(5) Before each anniversary of the date when its plan (or revised plan) was last published, the water undertaker shall—

- (a) review its plan; and
- (b) send a statement of the conclusions of its review to the Department.

(6) The water undertaker shall prepare a revised plan in each of the following cases—

- (a) following conclusion of its annual review, if the review indicated a material change of circumstances;
- (b) if directed to do so by the Department, after consultation with DOE;
- (c) in any event, not later than the end of the period of 5 years beginning with the date when the plan (or revised plan) was last published,

and shall follow the procedure in Article 71 (whether or not the revised plan prepared by the undertaker includes any proposed alterations to the previous plan).

(7) The Department may give directions specifying—

- (a) the form which a water resources management plan must take;
- (b) the planning period to which a water resources management plan must relate.

(8) Before preparing its water resources management plan (including a revised plan), the water undertaker shall consult—

- (a) the Authority;
- (b) the Council;
- (c) the Department; and
- (d) DOE.

(9) In this Article, in relation to a water resources management plan, “published” means published in accordance with Article 71(8)(a).

## **Water resources management plans: publication and representations**

71.—(1) A water undertaker shall—

- (a) send a draft water resources management plan to the Department;
- (b) state whether it appears to the undertaker that any information contained in that plan is or might be commercially confidential (as regards itself or another person); and
- (c) give the Department the name of each such other person and his address for service of a notice under paragraph (2)(a).

(2) If the water undertaker states that it so appears in relation to any such information, the Department shall—

- (a) if the person to whom or to whose business the information relates is not the water undertaker, give that person notice that the information is included in a draft water resources management plan and, unless paragraph (10) applies, is required to be published under this Article; and
- (b) give each person (including the water undertaker) to whom any such information relates a reasonable opportunity—
  - (i) of objecting to the publication of the information relating to him on the ground that it is commercially confidential; and
  - (ii) of making representations to the Department for the purpose of justifying any such objection,

and shall determine, taking any objections and representations under sub-paragraph (b) into account, whether the information is or is not commercially confidential.

(3) A water undertaker shall—

- (a) (subject to paragraph (10)) publish the draft water resources management plan in the prescribed way or, if no way is prescribed, in a way calculated to bring it to the attention of persons likely to be affected by it;
- (b) publish with it a statement—
  - (i) whether any information has been excluded from the published draft plan by virtue of paragraph (10) and, if it has, the general nature of that information; and
  - (ii) that any person may make representations in writing about the plan to the Department before the end of a period specified in the statement; and
- (c) send a copy of the published draft plan and accompanying statement to such persons (if any) as may be prescribed.

(4) The Department shall—

- (a) send to the water undertaker a copy of any representations it receives following publication of the draft plan under paragraph (3); and
- (b) give the water undertaker a reasonable period of time within which to comment on the representations;

but the Department may exclude from any representation sent under sub-paragraph (a) any information contained therein which the Department determines to be commercially confidential (as regards any person other than the water undertaker).

(5) The Department may in regulations prescribe how such representations and any comments by the water undertaker on them are to be dealt with.

(6) Regulations under paragraph (5) may provide for the Department to cause a local inquiry to be held in connection with the draft water resources management plan.

(7) The Department may direct a water undertaker that its water resources management plan must differ from the draft sent to it under paragraph (1) in ways specified in the direction, and (subject to paragraph (9)) it shall be the duty of the water undertaker to comply with the direction.

(8) The water undertaker shall—

- (a) (subject to paragraph (10)) publish the water resources management plan in the prescribed way or, if no way is prescribed, in a way calculated to bring it to the attention of persons likely to be affected by it; and
- (b) publish with it a statement whether any information has been excluded from the published plan by virtue of paragraph (10) and, if it has, the general nature of that information.

(9) If the water undertaker considers that publishing a water resources management plan complying with a direction under paragraph (7) would mean including in the published plan any information (other than any information in relation to which the Department has already made a determination under paragraph (2)) which might be commercially confidential (as regards itself or another person)—

- (a) the water undertaker shall send the Department a notice saying so, and giving the Department the name of any such other person and his address for service of a notice under paragraph (2)(a) as applied by sub-paragraph (b); and
- (b) paragraph (2) shall apply in relation to that information as it applies in relation to the information referred to there;

and the Department may either confirm its direction under paragraph (7) (which is to be treated as a new direction under paragraph (7)) or revoke the previous such direction (or the previous one so treated) and give a new one.

(10) The published version of a draft water resources management plan published under paragraph (3)(a), and a water resources management plan published under paragraph (8)(a), shall exclude any information which—

- (a) the Department has determined under paragraph (2) (or that paragraph as applied by paragraph (9)) is commercially confidential; or
- (b) the Secretary of State directs the water undertaker to exclude on the ground that it appears to the Secretary of State that its publication would be contrary to the interests of national security.

(11) Any steps to be taken by a water undertaker under this Article shall be completed by such time or within such period as the Department may direct.

### **Water resources management plans: supplementary**

72.—(1) Directions given under Article 70 or 71 may be—

- (a) general directions applying to all water undertakers; or
- (b) directions applying only to one or more water undertakers specified in the directions,

and shall be given by an instrument in writing.

(2) It shall be the duty of each water undertaker to whom directions apply to comply with the directions.

(3) The duties of a water undertaker under Articles 70 and 71 and under this Article shall be enforceable by the Department under Article 30.

### **Drought plans: preparation and review**

73.—(1) It shall be the duty of each water undertaker to prepare and maintain a drought plan.

(2) A drought plan is a plan for how the water undertaker will continue, during a period of drought, to discharge its duties to supply adequate quantities of wholesome water, with as little recourse as reasonably possible to drought orders under Article 137.

(3) The duties referred to in paragraph (2) include in particular those imposed under or by virtue of—

- (a) Article 65
- (b) Articles 107 to 109.

(4) A drought plan shall address, in particular, the following matters—

- (a) what measures the water undertaker might need to take to restrain the demand for water within its area;
- (b) what measures the water undertaker might need to take to obtain extra water from other sources;
- (c) how the water undertaker will monitor the effects of the drought and of the measures taken under the drought plan;
- (d) such other matters as the Department may specify in directions.

(5) Article 71 (water resources management plans: publication and representations), including any power in that Article to make regulations or give directions, applies in relation to drought plans (including revised plans) as it applies in relation to water resources management plans.

(6) Each water undertaker shall review (or further review) its drought plan and prepare a revised plan in each of the following cases—

- (a) if there is a material change of circumstances;
- (b) if directed to do so by the Department after consultation with DOE;
- (c) in any event, not later than the end of the period of 3 years beginning with the date when the plan (or revised plan) was last published in accordance with Article 71(8)(a) as applied by paragraph (5),

and shall follow the procedure in Article 71 as applied by paragraph (5) (whether or not the revised plan prepared by the undertaker includes any proposed alterations to the previous plan).

(7) Before preparing its drought plan (including a revised plan), the water undertaker shall consult—

- (a) the Authority;
- (b) the Council;
- (c) the Department; and
- (d) DOE.

(8) The Department may give directions specifying the form which a drought plan must take.

(9) Directions given under this Article (including directions given under Article 71 as applied by paragraph (5)) may be—

- (a) general directions applying to all water undertakers; or
- (b) directions applying only to one or more water undertakers specified in the directions,

and shall be given by an instrument in writing.

(10) It shall be the duty of each water undertaker to whom directions apply to comply with the directions.

(11) The duty of a water undertaker under this Article shall be enforceable by the Department under Article 30.

## CHAPTER II

### SUPPLY DUTIES

#### *Major supplies*

#### **Bulk supplies**

**74.—**(1) Where, on the application of any qualifying person—

- (a) it appears to the Authority that it is necessary or expedient for the purposes of securing the efficient use of water resources, or the efficient supply of water, that the water undertaker specified in the application (“the supplier”) should give a supply of water in bulk to the applicant, and
- (b) the Authority is satisfied that the giving and taking of such a supply cannot be secured by agreement,

the Authority may by order require the supplier to give and the applicant to take such a supply for such period and on such terms and conditions as may be provided in the order.

(2) In this Article “qualifying person” means—

- (a) a water undertaker; or
- (b) a person who has made an application for an appointment or variation under Article 15 which has not been determined.

(3) Where the application is made by a person who is a qualifying person by virtue of paragraph (2)(b), an order made under this Article in response to that application shall be expressed not to come into force until the applicant becomes a water undertaker for the area specified in the order, or for an area which includes that area.

(4) Subject to paragraph (3), an order under this Article shall have effect as an agreement between the supplier and the applicant.

(5) The Authority shall not make an order under this Article unless it has first consulted the Department.

(6) In exercising its functions under this Article, the Authority shall have regard to the desirability of—

- (a) facilitating effective competition within the water supply industry;
- (b) the supplier’s recovering the expenses of complying with its obligations by virtue of this Article and securing a reasonable return on its capital;
- (c) the supplier’s being able to meet its existing obligations, and likely future obligations, to supply water without having to incur unreasonable expenditure in carrying out works;
- (d) not putting at risk the ability of the supplier to meet its existing obligations, or likely future obligations, to supply water.

#### **Variation and termination of bulk supply agreements**

**75.—**(1) This Article applies where, on the application of any party to a bulk supply agreement—

- (a) it appears to the Authority that it is necessary or expedient for the purpose of securing the efficient use of water resources, or the efficient supply of water, to vary the agreement or to terminate it; and
- (b) the Authority is satisfied that that cannot be achieved by agreement between the parties to the agreement.



- (2) The Authority may by order—
- (a) vary the agreement by—
    - (i) varying the period for which the supply of water is to be given; or
    - (ii) varying any of the terms or conditions on which that supply is to be given; or
  - (b) terminate the agreement.
- (3) Before making any order under this Article the Authority shall consult the Department.
- (4) Where an order is made under this Article the agreement concerned shall have effect subject to the provision made by the order or (as the case may be) shall cease to have effect.
- (5) An order under this Article may require the payment of compensation by any party to the agreement to any other party.
- (6) The obligations of a water undertaker under paragraph (5) shall be enforceable under Article 30 by the Authority.
- (7) In exercising its functions under this Article, the Authority shall have regard to the expenses incurred by the supplier in complying with its obligations under the bulk supply agreement and to the desirability of—
- (a) facilitating effective competition within the water supply industry;
  - (b) the supplier's recovering the expenses of complying with its obligations by virtue of this Article and securing a reasonable return on its capital;
  - (c) the supplier's being able to meet its existing obligations, and likely future obligations, to supply water without having to incur unreasonable expenditure in carrying out works;
  - (d) not putting at risk the ability of the supplier to meet its existing obligations, or likely future obligations, to supply water.
- “bulk supply agreement” means an agreement between one or more water undertakers for the supply of water in bulk and includes—
- (a) an order under Article 74 which is deemed to be an agreement by virtue of paragraph (4) of that Article; and
  - (b) any agreement which has been varied by order under this Article; and
- “supplier”, in relation to a bulk supply agreement, means any water undertaker which is required by the agreement to provide a bulk supply of water.

In this Article—

### **Duty to comply with water main requisition**

**76.—**(1) It shall be the duty of a water undertaker (in accordance with Article 78) to provide a water main to be used for providing such supplies of water to premises in a particular locality in its area as (so far as those premises are concerned) are sufficient for domestic purposes, if—

- (a) the undertaker is required to provide the main by a notice served on the undertaker by one or more of the persons who under paragraph (2) are entitled to require the provision of the main for that locality;
- (b) the premises in that locality to which those supplies would be provided by means of that main are—
  - (i) premises consisting in buildings or parts of buildings; or
  - (ii) premises which will so consist when proposals made by any person for the erection of buildings or parts of buildings are carried out; and
- (c) the conditions specified in Article 77 are satisfied in relation to that requirement.

(2) Each of the following persons shall be entitled to require the provision of a water main for any locality—

- (a) the owner of any premises in that locality;
- (b) the occupier of any premises in that locality.

(3) The duty of a water undertaker under this Article to provide a water main shall be owed to the person who requires the provision of the main or, as the case may be, to each of the persons who joins in doing so.

(4) Where a duty is owed by virtue of paragraph (3) to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a water undertaker in pursuance of this paragraph, it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.

### **Financial conditions of compliance**

**77.**—(1) The conditions mentioned in Article 76(1)(c) are satisfied in relation to a requirement for the provision of a water main by a water undertaker if—

- (a) such undertakings as the undertaker may have reasonably required in accordance with paragraph (2) have been given by the person or persons who have required the provision of the main; and
- (b) such security as the undertaker may have reasonably required has been provided for the discharge of any obligations imposed by those undertakings on any person who, under paragraph (3), may be required to secure his undertakings.

(2) The undertakings which a water undertaker may require for the purposes of paragraph (1) in respect of any water main are undertakings which—

- (a) bind the person or persons mentioned in that paragraph to pay to the undertaker the reasonable costs of providing that main, as determined in accordance with the undertaker's charges scheme;
- (b) in the case of undertakings binding two or more persons, bind them either jointly and severally or with liability to pay apportioned in such manner as they may agree.

(3) For the purposes of paragraph (1)(b) a person may be required to secure his undertakings in relation to the provision of a water main if—

- (a) it was by virtue of Article 76(2)(a) or (b) that he required, or joined in requiring, the provision of the main; and
- (b) he is not a public authority.

(4) Where for the purposes of paragraph (1)(b) any sums have been deposited with a water undertaker by way of security for the discharge of any obligation, the undertaker shall pay interest at such rate as may be determined either—

- (a) by the undertaker with the approval of the Authority; or
- (b) in default of a determination under sub-paragraph (a), by the Authority,

on every sum so deposited for every 3 months during which it remains in the hands of the undertaker.

(5) An approval or determination given or made by the Authority for the purposes of paragraph (4)

- (a) may be given or made in relation to the provision of a particular water main, in relation to the provision of mains of a particular description or in relation to the provision of water mains generally; and
- (b) may be revoked at any time.

- (6) Any dispute between a water undertaker and any other person as to—
- (a) the undertakings or security required by the undertaker for the purposes of this Article; or
  - (b) the amount required to be paid in pursuance of any such undertaking,
- may be referred to the Authority for determination under Article 61 by either party to the dispute.

#### **Determination of completion date and routes for requisitioned main**

**78.**—(1) A water undertaker shall not be in breach of a duty imposed by Article 76 in relation to any locality unless—

- (a) the period of 3 months beginning with the relevant day has expired; and
  - (b) the water undertaker has not, before the end of that period, so laid the water main to be provided as to enable (as the case may be)—
    - (i) service pipes to premises in that locality; or
    - (ii) a water main which is the subject of an agreement under Article 86 (“the self-laid main”),to connect with the main at the place or places determined under paragraph (3).
- (2) The period mentioned in paragraph (1)(a) may be extended in any case—
- (a) by agreement between the water undertaker and the person or persons who required the provision of the main; or
  - (b) where there is a dispute as to whether the period should be extended, by the Authority on a reference under paragraph (4).
- (3) The places mentioned in paragraph (1)(b) shall be—
- (a) such places as are determined by agreement between the water undertaker and the person or persons who required the provision of the water main; or
  - (b) in default of agreement, such places as are determined by the Authority, on a reference under paragraph (4), to be the places at which it is reasonable, in all the circumstances, for service pipes to premises in the locality in question, or (as the case may be) the self-laid main, to connect with the water main.
- (4) A reference for the purposes of paragraph (2) or (3) may be made to the Authority for determination under Article 61 by either party to the dispute.
- (5) In this Article “relevant day”, in relation to a requirement to provide a water main, means the day after whichever is the later of the following—
- (a) the day on which the conditions specified in Article 77 are satisfied in relation to the requirement; and
  - (b) the day on which the place or places where (as the case may be)—
    - (i) service pipes to premises in the locality in question; or
    - (ii) the self-laid main,will connect with the main are determined under paragraph (3).

#### *Domestic connections*

#### **Duty to make connections with main**

**79.**—(1) Subject to the following provisions of this Article and to Articles 80 and 82, it shall be the duty of a water undertaker (in accordance with Article 85) to make a connection under this Article where the owner or occupier of any premises which—

(a) consist in the whole or any part of a building; or  
(b) are premises on which any person is proposing to erect any building or part of a building, serves a notice on the undertaker requiring it, for the purpose of providing a supply of water for domestic purposes to that building or part of a building, to connect a service pipe to those premises with one of the undertaker's water mains.

(2) In relation to service pipes which do not belong to or fall to be laid by the undertaker—

(a) paragraph (1) is subject to Article 89(1); and

(b) any such service pipe which is to vest in the undertaker by virtue of an agreement under Article 86 shall be connected to one of the undertaker's water mains subject to and in accordance with the terms of that agreement.

(3) Where a notice has been served for the purposes of this Article, the duty imposed by paragraph (1) shall be a duty, at the expense of the person serving the notice, to make the connection required by the notice if—

(a) the main with which the service pipe is required to be connected is neither a trunk main nor a water main which is or is to be used solely for the purpose of supplying water otherwise than for domestic purposes; and

(b) such conditions as the undertaker may have imposed under Articles 82 to 84 have been satisfied;

and, subject to Article 85, that duty shall arise whether or not the service pipe to which the notice relates has been laid when the notice is served.

(4) A notice for the purposes of this Article—

(a) shall be accompanied or supplemented by all such information as the undertaker may reasonably require; and

(b) if the notice has effect so that a requirement is imposed on the undertaker by virtue of Article 80(4), shall set out the matters that have given rise to the imposition of that requirement;

but, subject to Article 85(5) and without prejudice to the effect (if any) of any other contravention of this paragraph, a failure to provide information in pursuance of the obligation to supplement such a notice shall not invalidate that notice.

(5) The duty imposed on a water undertaker by this Article shall be owed to the person who served the notice by virtue of which the duty arises.

(6) Where a duty is owed by virtue of paragraph (5) to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a water undertaker in pursuance of this paragraph, it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.

(7) Where a water undertaker carries out any works which it is its duty under this Article to carry out at another person's expense, the undertaker shall be entitled to recover from that person an amount equal to the expenses reasonably incurred by the undertaker in carrying out the works.

(8) Any dispute between a water undertaker and any other person as to whether the expenses were incurred reasonably may be referred to the Authority for determination under Article 61 by either party to the dispute.

(9) Nothing in this Article or in Articles 80 to 85 shall impose any duty on a water undertaker to connect a service pipe to any premises with a service pipe to any other premises.

(10) In the following provisions of this Chapter a notice served for the purposes of this Article is referred to as a connection notice.

### **Duty to carry out ancillary works for the purpose of making domestic connection**

**80.**—(1) Where a water undertaker is required to make a connection in pursuance of any connection notice, it shall also be the duty of the undertaker, at the expense of the person serving the notice, to carry out such of the works to which this Article applies as need to be carried out before the connection can be made.

(2) This Article applies to the laying of so much of the service pipe to be connected with the water main as it is necessary, for the purpose of making that connection, to lay in a street.

(3) In a case where—

- (a) the water main with which the service pipe is to be connected is situated in a street;
- (b) the premises consisting in the building or part of a building in question together with any land occupied with it abut on the part of the street where the main is situated; and
- (c) the service pipe to those premises will—
  - (i) enter the premises otherwise than through an outer wall of a building abutting on the street; and
  - (ii) have a stopcock fitted to it by the undertaker in the premises,

this Article applies to the laying of so much of the service pipe as it is necessary, for the purpose of making the required connection, to lay in land between the boundary of the street and that stopcock.

(4) In a case where the connection notice is served in compliance with a requirement imposed by a notice by DOE under Article 119, this Article applies to the laying of so much of the service pipe to be connected with a water main in pursuance of the connection notice as it is necessary, for the purpose of making the connection, to lay in land owned or occupied by a person who is certified by DOE—

- (a) to have unreasonably refused his consent to the laying of the service pipe; or
- (b) to have sought to make the giving of his consent subject to unreasonable conditions.

(5) Where a water main is alongside a street and within 18 metres of the middle of that street, paragraphs (2) to (4) shall have effect in relation to the laying, for the purpose of making a connection with that main, of a service pipe to any premises as if the street included so much of the land between the main and the boundary of the street as is not comprised in those premises or in any land occupied with those premises.

(6) It shall be the duty of any water undertaker making a connection in pursuance of a connection notice to ensure that a stopcock belonging to the undertaker is fitted to the service pipe which is connected.

(7) Paragraphs (5) to (8) of Article 79 shall have effect—

- (a) in relation to any duties which, by virtue of a connection notice, are imposed on a water undertaker by this Article; and
- (b) in relation to any works which, by virtue of the service of such a notice, such an undertaker carries out under this Article at another person's expense,

as they have effect by virtue of that notice in relation to the duty which arises under that Article or, as the case may be, to works which the undertaker carries out under that Article at another person's expense.

(8) Subject to paragraph (9), a water undertaker may comply with any duty under this Article to lay a service pipe by laying a water main instead; but nothing in Article 79 or this Article shall impose any duty on a water undertaker to lay a water main where it has no power to lay a service pipe.

(9) Where a water undertaker exercises its power under paragraph (8) to lay a water main instead of a service pipe—

- (a) sub-paragraph (a) of Article 85(1) shall have effect as if any additional time reasonably required by reason of the laying of the main instead of the service pipe were included in the time allowed by that sub-paragraph for the laying of the service pipe; but
- (b) the expenses recoverable by virtue of Article 79(7) and paragraph (7) shall not exceed such amount as it would have been reasonable for the undertaker to have incurred in laying a service pipe instead of the main.

### **Conditions of connection concerning metering**

**81.**—(1) Where the owner or occupier of any premises (“the relevant premises”) serves a connection notice on a water undertaker, the undertaker shall make compliance with the requirements specified in paragraph (2) a condition of its complying with the duties to which it is subject by virtue of that notice.

(2) The requirements mentioned in paragraph (1) are—

- (a) a requirement that a meter for use in determining the amount of any charges which have been or may be fixed in relation to the relevant premises by reference to volume has been installed and connected either—
  - (i) by the undertaker; or
  - (ii) in accordance with specifications approved by the undertaker;
- (b) a requirement that—
  - (i) subject to Article 89(1), so much of the service pipe to the relevant premises as does not belong to, vest in or fall to be laid by the undertaker; and
  - (ii) the plumbing of the premises,
 comply with specifications approved by the undertaker for the purpose of ensuring that it will be reasonably practicable for such a meter as is mentioned in sub-paragraph (a) to be installed and connected as so mentioned.

(3) Specifications approved by any water undertaker for the purposes of paragraph (2)(a) or (b) may be approved—

- (a) in relation to particular premises; or
- (b) by being published in such manner as the undertaker considers appropriate, in relation to premises generally or to any description of premises.

(4) Any dispute between a water undertaker and any other person as to the terms of any condition imposed under this Article may be referred by either party for determination by the Authority under Article 61.

### **Conditions of connection with water main**

**82.**—(1) Subject to paragraph (3) and Articles 83 and 84, where the owner or occupier of any premises (“the relevant premises”) serves a connection notice on a water undertaker, the undertaker may make compliance with one or more of the requirements specified in paragraph (2) a condition of its complying with the duties to which it is subject by virtue of that notice.

(2) The requirements mentioned in paragraph (1) are—

- (a) a requirement that such security as the undertaker may reasonably require has been provided for the discharge of any obligations imposed by virtue of Article 79(7) or 80(7) (b) on the person who served the connection notice;
- (b) a requirement, in a case where the connection required by the connection notice is necessary as a consequence of a disconnection made by reason of any person’s failure to

pay any charges, that the person serving the connection notice has paid any amount owed by him to the undertaker—

- (i) in respect of a supply of water to the relevant premises; or
- (ii) in respect of expenses reasonably incurred in the making of the disconnection;
- (c) a requirement that a separate service pipe has been provided—
  - (i) to each house or building on the relevant premises; or
  - (ii) where different parts of a building on the relevant premises are separately occupied, to each of those parts or to any of them;
- (d) a requirement, in relation to the relevant premises—
  - (i) that such a requirement as may be imposed under Article 106 has been complied with; or
  - (ii) in a case where such a requirement could be imposed but for there already being such a cistern as is mentioned in that Article, that the cistern and its float-operated valve are in good repair;
- (e) a requirement that there is no contravention in relation to the water fittings used or to be used in connection with—
  - (i) the supply of water to the relevant premises; or
  - (ii) the use of water in those premises,of such of the requirements of regulations under Article 114 as are prescribed for the purposes of this sub-paragraph; and
- (f) a requirement that every such step has been taken as has been specified in any notice served on any person under Article 115 in relation to the relevant premises.

(3) No condition shall be imposed by a water undertaker under paragraph (2)(c) unless it is reasonable to do so in order to ensure that the undertaker will be able to perform its functions, in relation to the supply of water to the relevant premises or any part of those premises, efficiently.

(4) A condition shall not be imposed by a water undertaker under this Article or Article 81 on a person who has served a connection notice except by a counter-notice served on that person before the end of the period of 14 days beginning with the day after the service of the connection notice.

(5) Any dispute as to whether any requirement of a kind mentioned in paragraph (2)(a), (b), (c) or (d) has been complied with may be referred to the Authority for determination under Article 61 by either party to the dispute.

(6) Any dispute between a water undertaker and any other person as to whether—

- (a) any security required by a condition imposed under paragraph (2)(a) was reasonably required,
- (b) the expenses referred to in paragraph (2)(b)(ii) were incurred reasonably, or
- (c) in a particular case, paragraph (3) prevents a water undertaker from imposing a condition under paragraph (2)(c),

may be referred to the Authority for determination under Article 61 by either party to the dispute.

(7) This Article shall be without prejudice to the provisions of Articles 197 and 343 of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#) (conditions of supply after insolvency).

### **Interest on sums deposited in pursuance of the deposit condition**

**83.**—(1) Where for the purposes of paragraph (2)(a) of Article 82 any sums have been deposited with a water undertaker by way of security for the discharge of any obligation, the undertaker shall pay interest at such rate as may be determined either—

- (a) by the undertaker with the approval of the Authority; or
  - (b) in default of a determination under sub-paragraph (a), by the Authority,
- on every sum so deposited for every 3 months during which it remains in the hands of the undertaker.
- (2) An approval or determination by the Authority for the purposes of this Article—
- (a) may be given or made in relation to a particular case or description of cases or generally; and
  - (b) may be revoked at any time.

### **Restrictions on imposition of condition requiring separate service pipes**

**84.—**(1) This Article applies where the effect of a connection notice served in respect of any house is to require a service pipe to that house to be connected with a water main with which it has previously been connected.

(2) Where this Article applies, the water undertaker on which the connection notice is served shall not be entitled to make the reconnection subject to any such condition as, apart from this Article, may be imposed by virtue of Article 82(2)(c) unless the undertaker would have been entitled under Article 104 to require the provision of a separate service pipe if the reconnection had already been made.

### **Time for performance of connection etc. duties**

**85.—**(1) A water undertaker shall not be in breach of a duty imposed by virtue of the service of a connection notice unless—

- (a) in the case of a duty to lay any service pipe or to connect any service pipe to which such a duty relates, it has failed to lay that pipe or to make that connection as soon as reasonably practicable after the relevant day;
- (b) in the case of a duty to connect a service pipe the whole of which has already been laid when the notice is served on the undertaker, it has failed to make the connection before the end of the period of 14 days beginning with the relevant day.

(2) In any case in which a water undertaker is subject to any such duty as is mentioned in paragraph (1)(a), it shall be presumed, unless the contrary is shown in relation to that case, that the period of 21 days beginning with the relevant day is the period within which it is reasonably practicable for a water undertaker—

- (a) to lay so much of any service pipe; and
- (b) to fit such stopcock,

as it is necessary to lay or fit in that case for connecting a water main in a street with a service pipe at the boundary of any premises which abut on the part of the street where the main is situated.

(3) Where—

- (a) a connection notice is served in respect of any premises; and
- (b) at the time when the notice is served, the customer's part of the service pipe to those premises has not been laid,

the duties of the undertaker under Articles 79 and 80 shall not arise by virtue of that notice until the person serving the notice, having obtained the necessary consents from the owners and occupiers of any affected land, has, at his own expense, laid so much of the service pipe as it is necessary, for the purpose of making the connection, to lay otherwise than in a street or in land mentioned in paragraphs (3) to (5) of Article 80.



(4) In paragraph (3) the reference to the customer's part of the service pipe to any premises is a reference to so much of the service pipe to those premises as falls to be laid otherwise than by the water undertaker in pursuance of Article 80.

(5) Where—

- (a) a person who has served a connection notice on a water undertaker has failed to comply with his obligation under Article 79(4)(a) to supplement that notice with information required by the undertaker; and
- (b) that requirement was made by the undertaker at such a time before the end of the period within which the undertaker is required to comply with the duties imposed by virtue of the notice as gave that person a reasonable opportunity to provide the required information within that period,

the undertaker may delay its compliance with those duties until a reasonable time after the required information is provided.

(6) In this Article “the relevant day”, in relation to a duty imposed on a water undertaker by virtue of a connection notice, means the day after whichever is the latest of the following days, that is to say—

- (a) the day on which the notice was served on the undertaker;
- (b) in a case where it is necessary for the person serving the notice to lay any service pipe after serving the notice, the day on which a notice stating that the pipe has been laid is served on the undertaker;
- (c) the day on which all such conditions are satisfied as the undertaker has, under Articles 81 to 84, made conditions of its compliance with that duty.

#### *Adoption of water mains and service pipes*

#### **Agreements to adopt water main or service pipe at a future date**

**86.—**(1) Subject to paragraphs (2) and (10), a water undertaker may agree with any person constructing or proposing to construct—

- (a) any water main; or
- (b) any service pipe,

that, if the water main or service pipe is constructed in accordance with the terms of the agreement, the undertaker will, upon completion of the work, at some specified date or on the happening of some future event, declare the water main or (as the case may be) so much of the service pipe as the undertaker could otherwise, by virtue of Articles 79 to 85, be required to lay, to be vested in that undertaker.

(2) Paragraph (1) shall not apply in the case of water mains or service pipes which are to be used (in whole or in part) for the purpose of supplying water other than for domestic purposes, but—

- (a) nothing in this Article shall prevent a water undertaker from agreeing apart from this Article to declare any such water main or service pipe (or a part of it, as specified in the agreement) to be vested in the undertaker; and
- (b) such a declaration shall take effect as a declaration made under this Chapter.

(3) A person constructing or proposing to construct a water main or a service pipe to which paragraph (1) applies may make an application in writing to a water undertaker requesting the undertaker to make an agreement under this Article.

(4) An application under paragraph (3) shall be accompanied and supplemented by all such information as the undertaker may reasonably require; but subject to paragraph (5) and without

prejudice to the effect (if any) of any other contravention of the requirements of this Article in relation to such an application, a failure to provide information in pursuance of the obligation to supplement such an application shall not invalidate the application.

(5) Where—

- (a) a person who has made an application to a water undertaker under paragraph (3) has failed to comply with his obligation under this Article to supplement that application with information required by the undertaker; and
- (b) that requirement was made by the undertaker at such a time before the end of the period within which the undertaker is required, by virtue of Article 87, to respond to the application as gave that person a reasonable opportunity to provide the required information within that period,

the undertaker may delay its response to the application until a reasonable time after the required information is provided.

(6) In deciding whether or on what terms to grant an application under paragraph (3), a water undertaker shall have regard in particular to any effect or potential effect on the quality of water supplies and to any increased danger to life or health which it considers may result.

(7) The terms of an agreement under paragraph (1) relating to a water main may, in particular, include terms—

- (a) for the provision (at the expense of the person constructing or proposing to construct the water main) by—
  - (i) that person; or
  - (ii) the water undertaker,
 of such associated infrastructure at or downstream of the point of connection with the undertaker's supply system as it is necessary to provide in consequence of incorporating the new water main into that system;
- (b) providing that, if the water main and the associated infrastructure are constructed in accordance with the terms of the agreement, the undertaker will, in addition to declaring the water main to be vested in it, declare the associated infrastructure to be so vested;
- (c) where the undertaker considers that the proposed main is, or is likely to be, needed for the provision of water supply services in addition to those for which the person is proposing to construct the main—
  - (i) requiring that person to construct the main in a manner differing, as regards material or size of pipes, depth or otherwise, from the manner in which that person proposes, or could otherwise be required by the undertaker, to construct it; and
  - (ii) providing for the repayment by the undertaker of any extra expense reasonably incurred by that person in complying with that requirement;
- (d) for the connection of the new water main to the undertaker's existing supply system at the point or points specified in the agreement;
- (e) for any service pipes which the person constructing or proposing to construct the new water main proposes to connect to that main to be constructed in accordance with the terms of the agreement and, subject to that, to be vested in the undertaker at the same time as the main.

(8) The terms of an agreement under paragraph (1) relating to a service pipe may, in particular, include terms—

- (a) for the connection of the new service pipe to the undertaker's existing supply system at the point or points specified in the agreement;

(b) for such requirements of the kind referred to in Article 82(2) as may be applicable to be complied with before connection takes place.

(9) An agreement made under this Article by a water undertaker shall be enforceable against the undertaker by the owner or occupier for the time being of any premises connected or to be connected with the water main or service pipe to which it relates.

(10) A water undertaker shall not make an agreement under this Article with respect to a water main or a service pipe situated within the area of another water undertaker, until either—

- (a) that other undertaker has consented in writing to the making of the agreement; or
- (b) the Authority, on an application made to it, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as the Authority may think fit to impose.

### **Appeals with respect to adoption**

**87.**—(1) Subject to Article 86(5), a person constructing or proposing to construct a water main or service pipe may appeal to the Authority where the water undertaker—

- (a) has refused an application under Article 86;
- (b) has offered to grant such an application on terms to which that person objects; or
- (c) has failed, before the end of two months from the making of such an application, either to refuse the application or to give notice to the applicant of the terms on which it is prepared to grant the application.

(2) On the hearing of an appeal under this Article, the Authority may—

- (a) uphold the refusal of the undertaker to grant the application or to modify the terms offered; or
- (b) on behalf of the undertaker, refuse the application or enter into any agreement into which the undertaker might have entered on the application.

(3) Where the Authority makes an agreement under paragraph (2)(b) on behalf of a water undertaker, it may do so on such terms as it considers reasonable or, as the case may be, on the terms offered by the undertaker subject to such modifications as it considers appropriate for ensuring that the terms of the agreement are reasonable.

(4) An agreement entered into on behalf of a water undertaker under paragraph (2)(b) shall be deemed, for the purposes of this Order, to have been entered into under Article 86.

(5) In deciding on an appeal under this Article, the Authority may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the Authority) as it thinks fit, and any such provision as to costs or expenses shall be enforceable as if it were a money judgment within the meaning of the [Judgments \(Enforcement\) \(Northern Ireland\) Order 1981\(NI 6\)](#).

### **Financial conditions of compliance**

**88.**—(1) This Article applies where an agreement is, or is to be, entered into under Article 86 in relation to a water main (“the adopted main”) by, or on behalf of, a water undertaker and a person constructing or proposing to construct that water main.

(2) Where this Article applies, the water undertaker may, as a condition of the undertaker’s compliance with the agreement, require that person to pay to it the reasonable costs incurred by it in connection with the adopted main as determined in accordance with the undertaker’s charges scheme.

(3) For the purposes of any payment required to be made by virtue of paragraph (2), the water undertaker may require the person to provide such security as it may reasonably request, and the provisions of paragraphs (4) and (5) of Article 77 shall apply to any security so required as they apply to security required under that Article.

(4) Where this Article applies, the water undertaker shall pay to the person referred to in paragraph (1), upon declaring the water main to be vested in the undertaker—

- (a) such sum as may be determined in accordance with the charges scheme of the undertaker; or
- (b) if no such provision has been made in the charging scheme, such sum as the undertaker may with the approval of the Authority determine.

(5) Except in a case to which paragraph (4)(b) applies, any dispute between the water undertaker and the other person as to the payments required to be made or the security required to be provided by virtue of this Article may be referred to the Authority for determination under Article 61 by either party to the dispute.

### **Prohibition on connection without adoption**

**89.**—(1) Where a person (other than a water undertaker) constructs a water main or service pipe which is to be used, in whole or in part, for supplying water for domestic or food production purposes, no water undertaker may permit that water main or service pipe to become connected with its supply system unless it vests (to the relevant extent) in a water undertaker.

(2) In paragraph (1), “the relevant extent” means the extent specified in the agreement for the vesting in the undertaker of the water main or service pipe in question.

(3) The prohibition imposed on a water undertaker by paragraph (1) shall be enforceable under Article 30 by the Authority.

### **Articles 86 to 89: supplementary**

**90.**—(1) For the purposes of Articles 86 to 89, the definition of “water main” in Article 2(2) shall be treated as if the words “not being a pipe for the time being vested in a person other than the undertaker” were omitted.

(2) In Article 86, references to so much of the service pipe as the undertaker could otherwise, by virtue of Articles 79 to 85, be required to lay shall be construed disregarding Article 80(8).

(3) In this Order, references to vesting or the making of a declaration of vesting with respect to a service pipe refer to so much of the service pipe as is specified for those purposes in the relevant vesting agreement.

## *Domestic supplies*

### **The domestic supply duty**

**91.**—(1) The domestic supply duty of a water undertaker in relation to any premises is a duty, until there is an interruption of that duty—

- (a) to provide to those premises such a supply of water as (so far as those premises are concerned) is sufficient for domestic purposes; and
- (b) to maintain the connection between the undertaker’s water main and the service pipe by which that supply is provided to those premises.

(2) Subject to the following provisions of this Article and to Article 92, a water undertaker shall owe a domestic supply duty in relation to any premises to which this Article applies if—

(a) a demand for a supply of water for domestic purposes has been made, in accordance with paragraph (5), to the undertaker in respect of those premises; or

(b) those premises are premises to which this Article applies by reason of a supply of water provided before the transfer date,

and there has been no interruption of the domestic supply duty in relation to those premises since that demand was made or, as the case may be, since the transfer date.

(3) This Article applies to any premises if—

- (a) they consist in the whole or any part of a building and are connected by means of a service pipe to one of the undertaker's water mains; and
- (b) the requirements of paragraph (4) are satisfied in relation to those premises.

(4) The requirements of this paragraph are satisfied in relation to any premises if—

- (a) the pipe by means of which the premises are connected to the water main in question was first connected with that main in pursuance of a connection notice served in respect of those premises;
- (b) that pipe was the means by which a supply of water from that main was being supplied to those premises for domestic purposes immediately before the transfer date;
- (c) the condition specified in sub-paragraph (b) would be satisfied in relation to the premises if any service pipe to those premises had not been temporarily disconnected for the purposes of any necessary works which were being carried out immediately before the transfer date; or
- (d) the condition specified in any of the preceding sub-paragraphs—
  - (i) has been satisfied in relation to the premises at any time on or after the transfer date; and
  - (ii) would continue to be satisfied in relation to the premises had not the whole or any part of a service pipe to those premises, or the main with which such a pipe had been connected, been renewed (on one or more previous occasions).

(5) For the purposes of this Article a demand in respect of any premises is made in accordance with this paragraph if it is made—

- (a) by the person who is the occupier of the premises at the time when the demand is made; or
- (b) by a person who is the owner of the premises at that time and agrees with the undertaker to pay all the undertaker's charges in respect of the supply demanded.

(6) For the purposes of this Article—

- (a) there is an interruption of the domestic supply duty owed by a water undertaker in relation to any premises if that supply is cut off by anything done by the undertaker in exercise of any of its disconnection powers, other than a disconnection or cutting off for the purposes of the carrying out of any necessary works; and
- (b) a domestic supply duty owed in relation to any premises shall not be treated as interrupted by reason only of a change of the occupier or owner of the premises.

(7) Nothing in this Article shall impose any duty on a water undertaker—

- (a) to provide a supply of water directly from, or maintain any connection with, a water main which is a trunk main or is or is to be used solely for the purpose of supplying water otherwise than for domestic purposes; or
- (b) to provide a supply of water to any premises, or maintain the connection between a water main and a service pipe to any premises, during any period during which it is reasonable—
  - (i) for the supply of water to those premises to be cut off or reduced; or

(ii) for the pipe to be disconnected,

for the purposes of the carrying out of any necessary works.

(8) In this Article references to the disconnection powers of a water undertaker are references to the powers conferred on the undertaker by any of Articles 99 to 101 and 115.

### **Conditions of compliance with domestic supply duty**

**92.**—(1) Where a demand for the purposes of Article 91(2) has been made to a water undertaker in respect of any premises (“the relevant premises”), the undertaker may make compliance with one or more of the requirements specified in paragraph (2) a condition of providing his first supply of water in compliance with that demand.

(2) The requirements mentioned in paragraph (1) are—

(a) a requirement, in a case where the demand is made as a consequence of a supply having been cut off by reason of any person’s failure to pay any charges, that the person making the demand has paid any amount owed by him to the undertaker—

(i) in respect of a supply of water to the relevant premises; or

(ii) in respect of expenses reasonably incurred in cutting off any such supply;

(b) a requirement, in relation to the relevant premises—

(i) that such a requirement as may be imposed under Article 106 has been complied with; or

(ii) in a case where such a requirement could be imposed but for there already being such a cistern as is mentioned in that Article, that the cistern and its float-operated valve are in good repair;

(c) a requirement that there is no contravention in relation to the water fittings used or to be used in connection with—

(i) the supply of water to the relevant premises; or

(ii) the use of water in those premises,

of such of the requirements of regulations under Article 114 as are prescribed for the purposes of this paragraph; and

(d) a requirement that every such step has been taken as has been specified in any notice served on any person under Article 115 in relation to the relevant premises.

(3) Any dispute between a water undertaker and any other person as to whether any requirement of a kind mentioned in paragraph (2)(a) or (b) has been complied with may be referred to the Authority for determination under Article 61 by either party to the dispute.

(4) Any dispute between a water undertaker and any other person as to whether the expenses referred to in paragraph (2)(a)(ii) were incurred reasonably may be referred to the Authority for determination under Article 61 by either party to the dispute.

(5) This Article shall be without prejudice to the provisions of Articles 197 and 343 of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#) (conditions of supply after insolvency).

### **Enforcement of domestic supply duty**

**93.**—(1) A duty imposed on a water undertaker under Article 91—

(a) to provide a supply of water to any premises; or

(b) to maintain a connection between a water main and a service pipe by which such a supply is provided,

shall be owed to the consumer.

(2) Where a duty is owed by virtue of this Article to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a water undertaker in pursuance of this paragraph, it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.

### *Other supplies*

#### **Supplies for non-domestic purposes**

**94.**—(1) This Article applies where the owner or occupier of any premises in the area of a water undertaker requests the undertaker to provide a supply of water to those premises and—

- (a) the premises are premises which do not consist in the whole or any part of a building; or
- (b) the requested supply is for purposes other than domestic purposes.

(2) Where this Article applies, it shall be the duty of the water undertaker, in accordance with such terms and conditions as may be determined under Article 95—

- (a) to take any such steps as may be so determined in order to enable the undertaker to provide the requested supply; and
- (b) having taken any such steps, to provide that supply.

(3) A water undertaker shall not be required by virtue of this Article to provide a new supply to any premises, or to take any steps to enable it to provide such a supply, if the provision of that supply or the taking of those steps would—

- (a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works; or
- (b) otherwise put at risk the ability of the undertaker to meet any of the existing or probable future obligations mentioned in sub-paragraph (a).

(4) A water undertaker shall not be required by virtue of this Article to provide a new supply to any premises, or to take any steps to enable it to provide such a supply, if there is a contravention in relation to the water fittings used or to be used in connection with—

- (a) the supply of water to those premises; or
- (b) the use of water in those premises,

of such of the requirements of regulations under Article 114 as are prescribed for the purposes of this paragraph.

(5) Where—

- (a) a request has been made by any person to a water undertaker for the purposes of paragraph (2); and
- (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by the undertaker of any of its powers or the carrying out by the undertaker of any works,

the failure of the undertaker to acquire the necessary authority or agreement shall not affect any liability of that person, under any term or condition in accordance with which those steps are taken, to re-imburse the undertaker in respect of some or all of the expenses incurred by the undertaker in taking those steps.

(6) Nothing in this Article shall impose any duty on a water undertaker to provide a supply of water to any premises during any period during which it is reasonable for the supply of water to those premises to be cut off or reduced for the purposes of the carrying out of any necessary works.

(7) The duty of a water undertaker to supply water under this Article at the request of any person, and any terms and conditions determined under Article 95 in default of agreement between the undertaker and that person, shall have effect as if contained in such an agreement.

(8) Except so far as otherwise provided by the terms and conditions determined under Article 95 in relation to any supply, the duties of a water undertaker under this Article shall have effect subject to the provisions of Articles 99 to 102 and 115.

### **Determinations on requests for non-domestic supplies**

**95.**—(1) Subject to paragraph (3), any terms or conditions or other matter which falls to be determined for the purposes of a request made by any person to a water undertaker for the purposes of Article 94 shall be determined—

- (a) by agreement between that person and the water undertaker; or
- (b) in default of agreement, by the Authority according to what appears to it to be reasonable.

(2) Subject to paragraph (3), the Authority shall also determine any dispute arising between any person and a water undertaker by virtue of paragraph (3) or (4) of Article 94.

(3) The Authority may, instead of itself making a determination under paragraph (1) or (2), refer any matter submitted to it for determination under that paragraph to the arbitration of such person as it may appoint.

(4) For the purposes of any determination under this Article by the Authority or any person appointed by the Authority, it shall be for a water undertaker to show that it should not be required to comply with a request made for the purposes of Article 94.

(5) The charges in respect of a supply provided in compliance with any request made for the purposes of Article 94—

- (a) shall not be determined by the Authority or a person appointed by the Authority, except in so far as, at the time of the request, no provision is in force by virtue of a charges scheme under Article 201 in respect of supplies of the applicable description; and
- (b) in so far they do fall to be determined, shall be so determined having regard to the desirability of the undertaker's—
  - (i) recovering the expenses of complying with its obligations under Article 94; and
  - (ii) securing a reasonable return on its capital.

(6) To the extent that paragraph (5)(a) excludes any charges from a determination under this Article, those charges shall be fixed from time to time by a charges scheme under Article 201, but not otherwise.

(7) The determination of any matter under this Article shall be without prejudice to the provisions of Articles 197 and 343 of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#) (conditions of supply after insolvency).

### **Duty to provide a supply of water etc. for fire-fighting**

**96.**—(1) It shall be the duty of a water undertaker to allow any person to take water for extinguishing fires from any of its water mains or other pipes on which a fire-hydrant is fixed.

(2) Every water undertaker shall, at the request of the Northern Ireland Fire and Rescue Service Board (“the Board”), fix fire-hydrants on its water mains (other than its trunk mains) at such places



as may be most convenient for affording a supply of water for extinguishing any fire which may break out within the area of the undertaker.

(3) It shall be the duty of every water undertaker to keep every fire-hydrant fixed on any of its water mains or other pipes in good working order and, for that purpose, to replace any such hydrant when necessary.

(4) It shall be the duty of a water undertaker to ensure that the Board has been supplied by the undertaker with all such keys as the Board may require for the fire-hydrants fixed on the water mains or other pipes of the undertaker.

(5) Where a fire-hydrant is removed (other than at the request of the Board) by a water undertaker in the course of carrying out works in relation to any of its water mains or other pipes, the cost of replacing the fire-hydrant shall be borne by the undertaker.

(6) Subject to Article 97(3), the expenses incurred by a water undertaker in complying with its obligations under paragraphs (2) to (4) shall be borne by the Board.

(7) Nothing in this Article shall require a water undertaker to do anything which it is unable to do by reason of the carrying out of any necessary works.

(8) The obligations of a water undertaker under this Article shall be enforceable under Article 30 by the Department.

(9) In addition, where a water undertaker is in breach of its obligations under this Article, the undertaker shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(10) In any proceedings against any water undertaker for an offence under paragraph (9) it shall be a defence for that undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

### **Specially requested fire hydrants**

**97.**—(1) A water undertaker shall, at the request of the owner or occupier of any factory or place of business, fix a fire-hydrant, to be used for extinguishing fires and not other purposes, at such place on any suitable water main or other pipe of the undertaker as is as near as conveniently possible to that factory or place of business.

(2) For the purposes of paragraph (1) a water main or other pipe is suitable, in relation to a factory or place of business, if—

- (a) it is situated in a road which is in or near to that factory or place of business; and
- (b) it is of sufficient dimensions to carry a hydrant and is not a trunk main.

(3) Paragraph (6) of Article 96 shall not apply in relation to expenses incurred in compliance, in relation to a specially requested fire-hydrant, with the obligations under paragraphs (3) and (4) of that Article.

(4) Any expenses incurred by a water undertaker—

- (a) in complying with its obligations under paragraph (1); or
- (b) in complying, in relation to a specially requested fire-hydrant, with its obligations under Article 96(3) or (4),

shall be borne by the owner or occupier of the factory or place of business in question, according to whether the person who made the original request for the hydrant did so in his capacity as owner or occupier.

(5) Where a specially requested fire-hydrant is removed (other than at the request of the owner or occupier of the factory or place of business in question) by a water undertaker in the course of

carrying out works in relation to any of its water mains or other pipes, the cost of replacing the fire-hydrant shall be borne by the undertaker.

(6) Paragraphs (7) to (10) of Article 96 shall apply in relation to the obligations of a water undertaker under this Article as they apply to the obligations of a water undertaker under that Article.

(7) In this Article—

“factory” has the same meaning as in the Factories Act (Northern Ireland) 1965 (c. 20); and

“specially requested fire-hydrant” means a fire-hydrant which—

- (a) is fixed on a water main or other pipe of a water undertaker; and
- (b) was fixed on that main or pipe in pursuance of a request made by the owner or occupier of a factory or place of business.

### **Supplies for other public purposes**

**98.**—(1) A water undertaker shall, at the request of a sewerage undertaker, the Department or a district council, provide, from such of its pipes as are of an appropriate capacity, a supply of water for cleansing sewers and drains or for cleansing and watering roads.

(2) A supply of water provided by a water undertaker under this Article shall be provided upon such terms and conditions as may be reasonable.

(3) A water main or other pipe of a water undertaker shall be treated as of an appropriate capacity for the purposes of this Article if and only if it has a fire-hydrant fixed on it.

(4) Nothing in this Article shall require a water undertaker to do anything which it is unable to do by reason of the carrying out of any necessary works.

(5) The obligations of a water undertaker under this Article shall be enforceable under Article 30 by the Authority.

### *Disconnections*

#### **Disconnections for the carrying out of necessary works**

**99.**—(1) Subject to the following provisions of this Article, a water undertaker may—

- (a) disconnect a service pipe which, for the purposes of providing a supply of water to any premises, is connected with any water main of that undertaker; or
- (b) otherwise cut off a supply of water to any premises,

if it is reasonable for the disconnection to be made, or the supply to be cut off, for the purposes of the carrying out of any necessary works.

(2) The power of a water undertaker under this Article to cut off a supply of water shall include power to reduce a supply of water.

(3) Except in an emergency or in the case of a reduction which is immaterial, the power of a water undertaker under this Article to cut off or reduce a supply shall be exercisable in relation to any premises only after the undertaker has served reasonable notice on the consumer of the proposal for the carrying out of the necessary works.

(4) Where a water undertaker exercises its power under this Article to make any disconnection or to cut off or reduce a supply of water to any premises for the purposes of the carrying out of any necessary works, it shall owe a duty to the consumer to secure—

- (a) that those works are carried out with reasonable dispatch; and
- (b) that any supply of water to those premises for domestic purposes is interrupted for more than 24 hours for the purposes of the carrying out of those works only if an emergency

supply has been made available (whether or not in pipes) within a reasonable distance of the premises.

(5) Any breach by a water undertaker of the duty owed by virtue of paragraph (4) which causes any person to whom it is owed to sustain loss or damage shall be actionable at the suit of that person.

### **Disconnections for non-payment of charges**

**100.**—(1) Subject to the following provisions of this Article, a water undertaker may disconnect a service pipe which for the purposes of providing a supply of water to any premises is connected with any water main of that undertaker, or may otherwise cut off a supply of water to any premises, if the occupier of the premises—

- (a) is liable (whether in his capacity as occupier or under any agreement with the undertaker) to pay charges due to the undertaker in respect of the supply of water to those premises; and
- (b) has failed to do so before the end of the period of 7 days beginning with the day after he is served with notice requiring him to do so.

(2) The power conferred by paragraph (1) is not exercisable in relation to any premises specified in Schedule 2.

(3) Where—

- (a) a water undertaker has served a notice for the purposes of sub-paragraph (b) of paragraph (1) on a person; and
- (b) within the period of 7 days mentioned in that sub-paragraph, that person serves a counter-notice on the undertaker stating that he disputes his liability to pay the charges in question,

the undertaker shall not in respect of that notice exercise his power by virtue of that paragraph in relation to any premises except at a time when that person is the occupier of the premises and those charges are enforceable against that person in a manner specified in paragraph (4).

(4) For the purposes of paragraph (3) charges are enforceable in a manner specified in this paragraph against a person if—

- (a) the undertaker is able to enforce a judgment against that person for the payment of the charges; or
- (b) that person is in breach of an agreement entered into, since the service of his counter-notice, for the purpose of avoiding or settling proceedings by the undertaker for the recovery of the charges.

(5) A water undertaker which exercises its power under this Article to disconnect any pipe or otherwise to cut off any supply of water may recover, from the person in respect of whose liability the power is exercised, any expenses reasonably incurred by the undertaker in making the disconnection or in otherwise cutting off the supply.

(6) Where—

- (a) a water undertaker has power under this Article to disconnect any pipe to any premises, or otherwise to cut off any supply to any premises; and
- (b) a supply of water is provided to those premises and to other premises wholly or partly by the same service pipe,

the undertaker may exercise that power so as to cut off the supply to those other premises if and only if the same person is the occupier of the premises in relation to which the charges are due and of the other premises.

### **Disconnections at request of customer**

**101.**—(1) Subject to the following provisions of this Article, a water undertaker may—

(a) disconnect a service pipe which for the purposes of providing a supply of water to any premises is connected with any water main of that undertaker; or

(b) otherwise cut off a supply of water to any premises,

if notice specifying the time after which a supply of water to those premises will no longer be required has been served on the undertaker by a consumer and that time has passed.

(2) No person shall be liable to a water undertaker for any expenses incurred by the undertaker in exercising the power conferred on the undertaker by this Article.

### **General duties of undertakers with respect to disconnections**

**102.**—(1) Where a water undertaker—

(a) disconnects a service pipe to any inhabited house, or otherwise cuts off a supply of water to such a house; and

(b) does so without restoring the supply to that house before the end of the period of 24 hours beginning with the time when it is cut off,

the undertaker shall, no later than 48 hours after that time, serve notice that it has cut off that supply on the district council in whose district the house is situated.

(2) A water undertaker which fails, without reasonable excuse, to serve a notice on a district council as required by paragraph (1) shall be guilty of an offence under this Article.

(3) A water undertaker shall be guilty of an offence under this Article if—

(a) it disconnects a service pipe to any premises, or otherwise cuts off a supply of water to any premises, in a case in which it has no power to do so under Articles 99 to 101, Article 115 or any other statutory provision; or

(b) in disconnecting any such pipe or cutting off any such supply it fails, without reasonable excuse, to comply with any requirement of the provisions in pursuance of which it disconnects the pipe or cuts off the supply.

(4) A water undertaker which is guilty of an offence under this Article shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

### *Use of limiting devices*

### **Prohibition of use of limiting devices**

**103.**—(1) A water undertaker shall be guilty of an offence under this Article if it uses a limiting device in relation to any premises specified in Schedule 2, with the intention of enforcing payment of charges which are or may become due to the undertaker in respect of the supply of water to the premises.

(2) For the purposes of this Article “a limiting device”, in relation to any premises, means any device or apparatus which—

(a) is fitted to any pipe by which water is supplied to the premises or a part of the premises, whether that pipe belongs to the undertaker or to any other person, and

(b) is designed to restrict the use which may be made of water supplied to the premises by the undertaker.

(3) An undertaker does not commit an offence under this Article by disconnecting a service pipe to any premises or otherwise cutting off a supply of water to the premises.

(4) An undertaker guilty of an offence under this Article shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### *Means of supply*

#### **Supply by means of separate service pipes**

**104.**—(1) Subject to the following provisions of this Article, a water undertaker may require the provision of a separate service pipe to any premises which—

- (a) consist in a house or any other building or part of a building, being, in the case of a part of a building, a part which is separately occupied; and
- (b) are already supplied with water by the undertaker but do not have a separate service pipe.

(2) Where the supply of water to two or more houses is provided wholly or partly by the same service pipe, the water undertaker shall not require the provision of separate service pipes to those houses until—

- (a) the service pipe, in so far as it belongs to a person other than the undertaker, becomes so defective as to require renewal or is no longer sufficient to meet the requirements of those houses;
- (b) a payment in respect of the supply of water to any of those houses remains unpaid after the end of the period for which it is due;
- (c) the houses are, by structural alterations to one or more of them, converted into a larger number of houses;
- (d) the owner or occupier of any of those houses has interfered with, or allowed another person to interfere with, the existing service pipe and thereby caused the supply of water to any house to be interfered with; or
- (e) the undertaker has reasonable grounds for believing that such interference as is mentioned in sub-paragraph (d) is likely to take place.

(3) Any dispute between a water undertaker and any other person as to whether any condition of a kind mentioned in paragraph (2) has been complied with may be referred to the Authority for determination under Article 61 by either party to the dispute.

(4) If, in the case of any such premises as are described in paragraph (1), the water undertaker which provides a supply of water to those premises serves notice on the consumer requiring the provision of a separate service pipe and setting out the power of the undertaker under paragraph (5)—

- (a) that consumer shall, within 3 months after the service of the notice, lay so much of the required pipe as the undertaker is not under a duty to lay by virtue of sub-paragraph (b);
- (b) Articles 79 to 85 shall apply as if that consumer had by a connection notice required the undertaker to connect the separate service pipe to those premises with the undertaker's water main;
- (c) that consumer shall be presumed, without prejudice to his power to make further demands and requests—
  - (i) in so far as those premises were provided before the service of the notice with a supply of water for domestic purposes, to have made a demand for the purposes of Article 91 that such a supply is provided by means of the separate service pipe; and
  - (ii) in so far as those premises were provided before the service of the notice with a supply of water for other purposes, to have requested the undertaker to provide the same supply by means of that pipe as was provided before the service of the notice; and
- (d) on providing a supply of water to those premises by means of the separate service pipe, the undertaker may cut off any supply replaced by that supply and may make such disconnections of pipes by which the replaced supply was provided as it thinks fit.

(5) If a person upon whom a notice has been served for the purposes of paragraph (4) fails to comply with the notice, the water undertaker may—

- (a) itself carry out the works which that person was required to carry out; and
- (b) recover the expenses reasonably incurred by the undertaker in doing so from that person.

(6) Without prejudice—

- (a) to the power of a water undertaker by virtue of sub-paragraph (b) of paragraph (4) to impose conditions under Article 82; or
- (b) to the power conferred by virtue of sub-paragraph (d) of that paragraph,

any works carried out by a water undertaker by virtue of the provisions of the said sub-paragraph (b) or of paragraph (5) shall be necessary works for the purposes of this Chapter.

### **Duties of undertakers as respects constancy and pressure**

**105.**—(1) Subject to the following provisions of this Article, it shall be the duty of a water undertaker to cause the water in such of its water mains and other pipes as—

- (a) are used for providing supplies of water for domestic purposes; or
- (b) have fire-hydrants fixed on them,

to be laid on constantly and at such a pressure as will cause the water to reach to the top of the top-most storey of every building within the undertaker's area.

(2) Nothing in paragraph (1) shall require a water undertaker to provide a supply of water at a height greater than that to which it will flow by gravitation through its water mains from the service reservoir or tank from which that supply is taken.

(3) For the purposes of this Article a water undertaker shall be entitled to choose the service reservoir or tank from which any supply is to be taken.

(4) Nothing in paragraph (1) shall impose any duty on a water undertaker to maintain the constancy or pressure of any supply of water during any period during which it is reasonable for that supply to be cut off or reduced for the purposes of the carrying out of any necessary works.

(5) The Department may by order modify the application of the preceding provisions of this Article in relation to any water undertaker.

(6) The Department shall not make an order under paragraph (5) except—

- (a) in accordance with Schedule 3; and
- (b) on an application made in accordance with that Schedule by the Authority or by the water undertaker in relation to which the order is made.

(7) Subject to paragraph (6), an order under paragraph (5) shall be subject to negative resolution.

(8) An order under paragraph (5) may—

- (a) require the payment of compensation by a water undertaker to persons affected by the order; and
- (b) contain such supplemental, consequential and transitional provision as the Department considers appropriate.

(9) The obligations of a water undertaker under this Article shall be enforceable under Article 30 by the Authority.

(10) In addition, where a water undertaker is in breach of a duty under this Article, the undertaker shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(11) In any proceedings against any water undertaker for an offence under paragraph (10) it shall be a defence for that undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

### **Requirements by undertaker for maintaining pressure**

**106.**—(1) A water undertaker may require that any premises consisting in—

- (a) any building or part of a building the supply of water to which need not, in accordance with provision contained in or made under this Order, be constantly laid on under pressure; or
- (b) any relevant house to which water is required to be delivered at a height greater than a point 10.5 metres below the draw-off level of the service reservoir or tank from which a supply of water is being provided by the undertaker to those premises,

shall be provided with a cistern which has a float-operated valve and is fitted on the pipe by means of which water is supplied to those premises.

(2) A water undertaker may, in the case of such a house as is mentioned in sub-paragraph (b) of paragraph (1), require that a cistern the provision of which is required under that paragraph shall be capable of holding sufficient water to provide an adequate supply to the house for a period of 24 hours.

(3) If, where a water undertaker provides a supply of water to any premises, the consumer, after having been required to do so by notice served on him by the undertaker, fails before the end of the period specified in the notice—

- (a) to provide a cistern in accordance with a requirement under this Article; or
- (b) to put any such cistern and its float-operated valve into good repair,

the water undertaker may itself provide a cistern, or carry out any repairs necessary to prevent waste of water.

(4) The period specified for the purposes of paragraph (3) in a notice under this Article shall be a period of not less than 28 days beginning with the day after the service of the notice.

(5) Where a water undertaker provides a cistern or carries out any repairs under paragraph (3), it may recover the expenses reasonably incurred by it in doing so from the owner of the premises in question.

(6) In this Article “relevant house” means any house other than a house in relation to which the following two conditions are satisfied, that is to say—

- (a) the erection of the house was commenced before the transfer date; and
- (b) no such requirement as is mentioned in paragraph (1) or (2) could have been imposed by the Department in relation to the house under any statutory provision having effect immediately before that date.

## **CHAPTER III**

### **QUALITY AND SUFFICIENCY OF SUPPLY**

#### *Standards of wholesomeness*

#### **Standards of wholesomeness**

**107.**—(1) The Department may by regulations make provision that water supplied to any premises by a water undertaker is or is not to be regarded as wholesome for the purposes of this Chapter if it satisfies or, as the case may be, fails to satisfy such requirements as may be prescribed.

(2) DOE may by regulations make provision that water supplied to any premises by means of a private supply is or is not to be regarded as wholesome for the purposes of this Chapter if it satisfies or, as the case may be, fails to satisfy such requirements as may be prescribed.

(3) Without prejudice to the generality of paragraphs (1) and (2), regulations under this Article may, for the purpose of determining the wholesomeness of any water—

- (a) prescribe general requirements as to the purposes for which the water is to be suitable;
- (b) prescribe specific requirements as to the substances that are to be present in or absent from the water and as to the concentrations of substances which are or are required to be present in the water;
- (c) prescribe specific requirements as to other characteristics of the water;
- (d) provide that the question whether prescribed requirements are satisfied may be determined by reference to such samples as may be prescribed;
- (e) enable the Department (in the case of regulations under paragraph (1)) or DOE (in the case of regulations under paragraph (2)) to authorise such relaxations of and departures from the prescribed requirements (or from any of them) as may be prescribed, to make any such authorisation subject to such conditions as may be prescribed and to modify or revoke any such authorisation or condition.

#### *General obligations of water undertakers*

#### **Duties of water undertakers with respect to water quality**

**108.**—(1) It shall be the duty of a water undertaker—

- (a) when supplying water to any premises for domestic or food production purposes to supply only water which is wholesome at the time of supply; and
- (b) so far as reasonably practicable, to ensure, in relation to each source or combination of sources from which that undertaker supplies water to premises for domestic or food production purposes, that there is, in general, no deterioration in the quality of the water which is supplied from time to time from that source or combination of sources.

(2) For the purposes of this Article and Article 109 and subject to paragraph (3), water supplied by a water undertaker to any premises shall not be regarded as unwholesome at the time of supply where it has ceased to be wholesome only after leaving the undertaker's pipes.

(3) Where water supplied by a water undertaker to any premises would not otherwise be regarded as unwholesome at the time of supply, that water shall be regarded as unwholesome at that time if—

- (a) it has ceased to be wholesome after leaving the undertaker's pipes but while in a pipe which is subject to water pressure from a water main or which would be so subject but for the closing of some valve; and
- (b) it has so ceased in consequence of the failure of the undertaker, before supplying the water, to take such steps as may be prescribed for the purpose of securing the elimination, or reduction to a minimum, of any prescribed risk that the water would cease to be wholesome after leaving the undertaker's pipes.

(4) The provisions of this Article shall apply in relation to water which is supplied by a water undertaker whether or not the water is water which the undertaker is required to supply by virtue of any provision of this Order.

(5) The duties of a water undertaker under this Article shall be enforceable under Article 30 by the Department.



## Regulations for preserving water quality

**109.**—(1) The Department may by regulations require a water undertaker to take all such steps as may be prescribed for the purpose of securing compliance with Article 108.

(2) Without prejudice to the generality of the power conferred by paragraph (1), regulations under that paragraph may impose an obligation on a water undertaker—

- (a) to take all such steps as may be prescribed for monitoring and recording whether the water which that undertaker supplies to premises for domestic or food production purposes is wholesome at the time of supply;
- (b) to take all such steps as may be prescribed for monitoring and recording the quality of the water from any source, or combination of sources, which that undertaker uses or is proposing to use for supplying water to any premises for domestic or food production purposes;
- (c) to ensure that a source which that undertaker is using or proposing to use for supplying water for domestic or food production purposes is not so used until prescribed requirements for establishing the quality of water which may be supplied from that source have been complied with;
- (d) to keep records of the localities within which all the premises supplied with water for domestic or food production purposes by that undertaker are normally supplied from the same source or combination of sources;
- (e) to comply with prescribed requirements with respect to the analysis of water samples or with respect to internal reporting or organisational arrangements.

(3) Without prejudice to paragraphs (1) and (2), the Department may by regulations make provision with respect to the use by water undertakers, for the purposes of or in connection with the carrying out of their functions—

- (a) of such processes and substances; and
- (b) of products that contain or are made with such substances or materials,

as it considers might affect the quality of any water.

(4) Without prejudice to the generality of the power conferred by paragraph (3), regulations under that paragraph may—

- (a) forbid the use by water undertakers of processes, substances and products which have not been approved under the regulations or which contravene the regulations;
- (b) for the purposes of provision made by virtue of sub-paragraph (a), require processes, substances and products used by water undertakers to conform to such standards as may be prescribed by or approved under the regulations;
- (c) impose such other requirements as may be prescribed with respect to the use by water undertakers of prescribed processes, substances and products;
- (d) provide for the giving, refusal and revocation, by prescribed persons, of approvals required for the purposes of the regulations, for such approvals to be capable of being made subject to such conditions as may be prescribed and for the modification and revocation of any such condition;
- (e) impose obligations to furnish prescribed persons with information reasonably required by those persons for the purpose of carrying out functions under the regulations;
- (f) provide for a contravention of the regulations to constitute—
  - (i) a summary offence punishable, on summary conviction, by a fine not exceeding level 5 on the standard scale or such smaller sum as may be prescribed; or

- (ii) an offence triable either summarily or on indictment and punishable, on summary conviction, by a fine not exceeding the statutory maximum and, on conviction on indictment, by a fine; and
- (g) require prescribed charges to be paid to persons carrying out functions under the regulations.
- (5) The Department may by regulations require a water undertaker—
  - (a) to publish information about the quality of water supplied for domestic or food production purposes to any premises by that undertaker; and
  - (b) to provide information to prescribed persons about the quality of water so supplied.
- (6) Regulations under paragraph (5)—
  - (a) shall prescribe both the information which is to be published or provided in pursuance of the regulations and the manner and circumstances in which it is to be published or provided;
  - (b) may require the provision of information by a water undertaker to any person to be free of charge or may authorise it to be subject to the payment by that person to the undertaker of a prescribed charge; and
  - (c) may impose such other conditions on the provision of information by a water undertaker to any person as may be prescribed.

### **Offence of supplying water unfit for human consumption**

**110.**—(1) Subject to paragraph (3), where a water undertaker supplies water by means of pipes to any premises and that water is unfit for human consumption, the undertaker shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding £20,000; or
- (b) on conviction on indictment, to a fine.

(2) For the purposes of section 20(2) of the Interpretation Act (Northern Ireland) 1954 (c. 33) and any other statutory provision under which an individual is guilty of an offence by virtue of paragraph (1), the penalty on conviction on indictment of an offence under this Article shall be deemed to include imprisonment (in addition to or instead of a fine) for a term not exceeding two years.

(3) In any proceedings against any water undertaker for an offence under this Article it shall be a defence for that undertaker to show that it—

- (a) had no reasonable grounds for suspecting that the water would be used for human consumption; or
- (b) took all reasonable steps and exercised all due diligence for securing that the water was fit for human consumption on leaving its pipes or was not used for human consumption.

(4) Proceedings for an offence under this Article shall not be instituted except by the Department or the Director of Public Prosecutions for Northern Ireland.

*Waste, contamination, misuse, etc.*

### **Waste from water sources**

**111.**—(1) Subject to paragraphs (2) and (3), a person shall be guilty of an offence under this Article if—

- (a) he causes or allows any underground water to run to waste from any well, borehole or other work; or
  - (b) he abstracts from any well, borehole or other work water in excess of his reasonable requirements.
- (2) A person shall not be guilty of an offence by virtue of paragraph (1)(a) in respect of anything done for the purpose—
- (a) of testing the extent or quality of the supply; or
  - (b) of cleaning, sterilising, examining or repairing the well, borehole or other work in question.
- (3) Where underground water interferes or threatens to interfere with the carrying out or operation of any underground works (whether waterworks or not), it shall not be an offence under this Article, if no other method of disposing of the water is reasonably practicable, to cause or allow the water to run to waste so far as may be necessary for enabling the works to be carried out or operated.
- (4) A person who is guilty of an offence under this Article shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (5) On the conviction of a person under this Article, the court may—
- (a) order that the well, borehole or other work to which the offence relates shall be effectively sealed; or
  - (b) make such other order as appears to the court to be necessary to prevent waste of water.
- (6) If any person fails to comply with an order under paragraph (5), then, without prejudice to any penalty for contempt of court, the court may, on the application of DOE, authorise DOE to take such steps as may be necessary to execute the order; and any expenses incurred in taking any such steps shall be recoverable summarily as a civil debt from the person convicted.
- (7) Any person designated for the purpose by DOE shall, on producing some duly authenticated document showing his authority, have a right at all reasonable times—
- (a) to enter any premises for the purpose of ascertaining whether there is, or has been, any contravention of the provisions of this Article on or in connection with the premises;
  - (b) to enter any premises for the purpose of executing any order of the court under this Article which DOE has been authorised to execute in those premises.
- (8) Part I of Schedule 4 shall apply to the rights of entry conferred by paragraph (7).

### **Contamination of water sources**

**112.**—(1) Subject to paragraphs (2) and (3), a person is guilty of an offence under this Article if he is guilty of any act or neglect whereby the water in any waterworks which is used or likely to be used—

- (a) for human consumption or domestic purposes; or
  - (b) for manufacturing food or drink for human consumption,
- is polluted or likely to be polluted.

(2) Nothing in this Article shall be construed as restricting or prohibiting any method of cultivation of land which is in accordance with the principles of good husbandry.

(3) Nothing in this Article shall be construed as restricting or prohibiting the reasonable use of oil or tar on any road so long as the Department takes all reasonable steps for preventing—

- (a) the oil or tar; and
  - (b) any liquid or matter resulting from the use of the oil or tar,
- from polluting the water in any waterworks.

- (4) A person who is guilty of an offence under this Article shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum and, in the case of a continuing offence, to a further fine not exceeding £50 for every day during which the offence is continued after conviction;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (5) In this Article “waterworks” includes—
- (a) any spring, well, adit, borehole, service reservoir or tank; and
  - (b) any main or other pipe or conduit of a water undertaker.

### **Offences of contaminating, wasting and misusing water, etc.**

**113.**—(1) If any person who is the owner or occupier of any premises to which a supply of water is provided by a water undertaker intentionally or negligently causes or suffers any water fitting for which he is responsible to be or remain so out of order, so in need of repair or so constructed or adapted, or to be so used—

- (a) that water in a water main or other pipe of a water undertaker, or in a pipe connected with such a water main or pipe, is or is likely to be contaminated by the return of any substance from those premises to that main or pipe;
- (b) that water that has been supplied by the undertaker to those premises is or is likely to be contaminated before it is used; or
- (c) that water so supplied is or is likely to be wasted or, having regard to the purposes for which it is supplied, misused or unduly consumed,

that person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

- (2) In any proceedings under paragraph (1) it shall be a defence to prove—
- (a) that the contamination or likely contamination, or the wastage, misuse or undue consumption, was caused (wholly or mainly) by the installation, alteration, repair or connection of the water fitting on or after the transfer date;
  - (b) that the works were carried out by or under the direction of a contractor approved for the purposes of regulations under Article 114; and
  - (c) that the contractor certified to the person who commissioned those works that the water fitting complied with the requirements of those Regulations.

(3) Any person who uses any water supplied to any premises by a water undertaker for a purpose other than one for which it is supplied to those premises shall, unless the other purpose is the extinguishment of a fire, be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(4) Where a person has committed an offence under paragraph (3), the water undertaker in question shall be entitled to recover from that person such amount as may be reasonable in respect of any water wasted, misused or improperly consumed in consequence of the commission of the offence.

(5) For the purposes of this Article the owner or occupier of any premises shall be regarded as responsible for every water fitting on the premises which is not a water fitting which a person other than the owner or, as the case may be, occupier is liable to maintain.

## **Regulations for preventing contamination, waste, etc and with respect to water fittings**

**114.**—(1) The Department may by regulations make such provision as it considers appropriate for any of the following purposes, that is to say—

- (a) for securing—
  - (i) that water in a water main or other pipe of a water undertaker is not contaminated; and
  - (ii) that its quality and suitability for particular purposes is not prejudiced, by the return of any substance from any premises to that main or pipe;
- (b) for securing that water which is in any pipe connected with any such main or other pipe or which has been supplied to any premises by a water undertaker is not contaminated, and that its quality and suitability for particular purposes is not prejudiced, before it is used;
- (c) for preventing the waste, undue consumption and misuse of any water at any time after it has left the pipes of a water undertaker for the purpose of being supplied by that undertaker to any premises; and
- (d) for securing that water fittings installed and used by persons to whom water is or is to be supplied by a water undertaker are safe and do not cause or contribute to the erroneous measurement of any water or the reverberation of any pipes.

(2) Without prejudice to the generality of paragraph (1), regulations under this Article may, for any of the purposes specified in that paragraph, make provision in relation to such water fittings as may be prescribed—

- (a) for forbidding the installation, connection or use of the fittings if they have not been approved under the regulations or if they contravene the regulations;
  - (b) for requiring the fittings, for the purposes of provision made by virtue of sub-paragraph (a), to be of such a size, nature, strength or workmanship, to be made of such materials or in such a manner or to conform to such standards as may be prescribed by or approved under the regulations;
  - (c) for imposing such other requirements as may be prescribed with respect to the installation, arrangement, connection, testing, disconnection, alteration and repair of the fittings and with respect to the materials used in their manufacture;
  - (d) for the giving, refusal and revocation, by prescribed persons, of approvals required for the purposes of the regulations; and
  - (e) for such approvals to be capable of being made subject to such conditions as may be prescribed and for the modification and revocation of any such condition.
- (3) Without prejudice as aforesaid, regulations under this Article may—
- (a) impose separate or concurrent duties with respect to the enforcement of the regulations on water undertakers and such other persons as may be prescribed;
  - (b) confer powers on a water undertaker to carry out works and take other steps, in prescribed circumstances, for remedying any contravention of the regulations;
  - (c) provide for the recovery by a water undertaker of expenses reasonably incurred by the undertaker in the exercise of any power conferred by virtue of sub-paragraph (b);
  - (d) repeal or modify the provisions of Article 113 or Article 115;
  - (e) provide for a contravention of the regulations to constitute a summary offence punishable, on summary conviction, by a fine not exceeding level 5 on the standard scale or such smaller sum as may be prescribed;
  - (f) require prescribed charges to be paid to persons carrying out functions under the regulations;

- (g) enable the Department to authorise such relaxations of and departures from such of the requirements of the regulations as may be prescribed, to make any such authorisation subject to such conditions as may be prescribed and to modify or revoke any such authorisation or condition;
  - (h) enable the Department to authorise a water undertaker (either instead of the Department or concurrently with it) to exercise any power conferred on the Department by regulations made by virtue of sub-paragraph (g); and
  - (i) require disputes arising under the regulations to be referred to arbitration and for determinations under the regulations to be subject to such rights of appeal as may be prescribed.
- (4) Without prejudice to Articles 124 and 231, any person designated in writing for the purposes of this paragraph in such manner as may be prescribed may—
- (a) enter any premises for the purpose of—
    - (i) ascertaining whether any provision contained in or made or having effect under this Order with respect to any water fittings or with respect to the waste or misuse of water is being or has been contravened;
    - (ii) determining whether, and if so in what manner, any power or duty conferred or imposed on any person by regulations under this Article should be exercised or performed; or
    - (iii) exercising any such power or performing any such duty; or
  - (b) carry out such inspections, measurements and tests on premises entered by that person or on water fittings or other articles found on any such premises, and take away such samples of water or of any land and such water fittings and other articles, as that person has been authorised to carry out or take away in accordance with regulations under this Article.
- (5) Part II of Schedule 4 shall apply to the rights and powers conferred by paragraph (4).
- (6) Any sums received by the Department in consequence of the provisions of any regulations under this Article shall be paid into the Consolidated Fund.
- (7) In this Article “safe” has the same meaning as in Part II of the Consumer Protection Act 1987 (c. 43)

**Power to prevent damage and to take steps to prevent contamination, waste, etc.**

**115.**—(1) Without prejudice to any power conferred on water undertakers by regulations under Article 114, where a water undertaker which provides a supply of water to any premises has reason for believing—

- (a) that damage to persons or property is being or is likely to be caused by any damage to, or defect in, any water fitting used in connection with the supply of water to those premises which is not a service pipe belonging to the undertaker;
  - (b) that water in a water main or other pipe of the undertaker is being or is likely to be contaminated by the return of any substance from those premises to that main or pipe;
  - (c) that water which is in any pipe connected with any such main or other pipe or which has been supplied by the undertaker to those premises is being or is likely to be contaminated before it is used; or
  - (d) that water which has been or is to be so supplied is being or is likely to be wasted or, having regard to the purposes for which it is supplied, misused or unduly consumed,
- the undertaker may exercise the power conferred by paragraph (2) in relation to those premises.

- (2) The power conferred by this paragraph in relation to any premises is—

(a) where the case constitutes an emergency, power to disconnect the service pipe or otherwise to cut off the supply of water to those premises; and

(b) in any other case, power to serve notice on the consumer requiring him to take such steps as may be specified in the notice as necessary to secure that the damage, contamination, waste, misuse or undue consumption ceases or, as the case may be, does not occur.

(3) Where a water undertaker, in exercise of the power conferred by virtue of paragraph (2)(a), disconnects a service pipe to any premises or otherwise cuts off any supply of water to any premises, the undertaker shall, as soon as reasonably practicable after the supply is disconnected or cut off, serve a notice on the consumer specifying the steps which that person is required to take before the undertaker will restore the supply.

(4) The steps specified in a notice under paragraph (3) shall be the steps necessary to secure that, as the case may be—

(a) the damage, contamination, waste, misuse or undue consumption; or

(b) the likelihood of damage, contamination, waste, misuse or undue consumption,

would not recur if the supply were restored.

(5) A water undertaker which fails, without reasonable excuse, to serve a notice in accordance with paragraph (3) shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(6) A notice served for the purposes of paragraph (2)(b) shall—

(a) specify the period, not being less than the period of 7 days beginning with the day after the service of the notice, within which the steps specified in the notice are to be taken; and

(b) set out the powers of the undertaker under paragraphs (7) to (9).

(7) Where a water undertaker has served a notice for the purposes of paragraph (2)(b) in relation to any premises and—

(a) the case becomes an emergency; or

(b) the premises appear to be unoccupied and the steps specified in the notice are not taken before the end of the period so specified,

the undertaker may disconnect the service pipe to those premises or otherwise cut off the supply of water to those premises.

(8) Paragraphs (3) to (5) shall apply where a water undertaker exercises its power under paragraph (7) as they apply where such an undertaker exercises its power by virtue of paragraph (2)(a).

(9) Where, in a case not falling within paragraph (7)(a) or (b), any steps specified in a notice served by a water undertaker for the purposes of paragraph (2)(b) have not been taken by the end of the period so specified, the water undertaker shall have power—

(a) to take those steps itself; and

(b) subject to paragraph (10), to recover any expenses reasonably incurred by the undertaker in taking those steps from the person on whom the notice was served,

and any steps taken by a water undertaker by virtue of sub-paragraph (a) shall be necessary works for the purposes of Chapter II.

(10) Where any steps are taken by virtue of this Article and it is shown that, in the circumstances of the case, those steps were not necessary as mentioned in paragraph (2) or, as the case may be, (4), the water undertaker in question—

(a) shall not be entitled to recover any expenses incurred by it in taking those steps; and

- (b) shall be liable to pay to any other person who took any of those steps an amount equal to any expenses reasonably incurred by that person in taking any of those steps.

### **Temporary hosepipe bans**

**116.—**(1) If a water undertaker is of the opinion that a serious deficiency of water available for distribution by that undertaker exists or is threatened, that undertaker may, for such period as it thinks necessary, prohibit or restrict, as respects the whole or any part of its area, the use for the purpose of—

- (a) watering private gardens; or
- (b) washing private motor cars,

of any water supplied by that undertaker and drawn through a hosepipe or similar apparatus.

(2) A water undertaker imposing a prohibition or restriction under this Article shall, before it comes into force, give public notice of it, and of the date on which it will come into force, in two or more newspapers circulating in the locality affected by the prohibition or restriction.

(3) Any person who, at a time when a prohibition or restriction under this Article is in force, contravenes its provisions shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(4) Where a prohibition or restriction is imposed by a water undertaker under this Article, charges made by the undertaker for the use of a hosepipe or similar apparatus shall be subject to a reasonable reduction and, in the case of a charge paid in advance, the undertaker shall make any necessary repayment or adjustment.

(5) In this Article “private motor car” means any mechanically propelled vehicle intended or adapted for use on roads other than—

- (a) a public service vehicle, within the meaning of the [Road Traffic \(Northern Ireland\) Order 1981 \(NI 1\)](#) ; or
- (b) a goods vehicle within the meaning of that Order,

and includes any vehicle drawn by a private motor car.

### *Insufficient or unwholesome piped supplies*

### **Functions of the Department where piped supplies insufficient or unwholesome**

**117.—**(1) This Article applies to a case in which it is not practicable at reasonable cost for a water undertaker, by supplying water in pipes, to provide or maintain such a supply of wholesome water to any particular premises in its area as (so far as those premises are concerned) is sufficient for domestic purposes.

(2) In any case to which this Article applies, it shall be the duty of the Department, if it is satisfied—

- (a) that the insufficiency or unwholesomeness of the supply of water for domestic purposes to those premises is such as to cause a danger to life or health; and
- (b) that it is practicable at reasonable cost for the water undertaker, by providing it otherwise than in pipes, to provide to those premises such a supply of wholesome water as is sufficient for those purposes,

to require the undertaker, under paragraph (3), to provide a supply of water to those premises otherwise than in pipes.

- (3) Where, in a case to which this Article applies—



- (a) the insufficiency or unwholesomeness of the supply of water for domestic purposes to the premises in question is such as to cause a danger to life or health;
- (b) it is practicable at reasonable cost for the water undertaker, by providing it otherwise than in pipes, to provide to those premises such a supply of wholesome water as (so far as those premises are concerned) is sufficient for domestic purposes; and
- (c) the Department notifies the undertaker of the danger to life or health and requires the undertaker to provide a supply otherwise than in pipes,

it shall be the duty of the undertaker, for such period as may be required by the Department, to provide any supply to those premises which it is practicable at reasonable cost to provide otherwise than in pipes and which it is required to provide by the Department.

(4) Where under this Article the Department requires the provision by a water undertaker of a supply of water to any premises, the Department—

- (a) shall be liable to the undertaker for any charges payable by virtue of Chapter I of Part VII in respect of the provision of that supply; but
- (b) shall have power to recover the whole or any part of any charges paid by virtue of this paragraph from the owner or occupier of the premises to which the supply is provided.

(5) In this Article references to the provision of a supply of water to any premises otherwise than in pipes shall have effect, in a case in which it is practicable at reasonable cost to provide a supply (whether or not in pipes) to a place within a reasonable distance of those premises, as including references to the provision of a supply to that place.

(6) The duty of a water undertaker under paragraph (3) shall be enforceable under Article 30 by the Authority.

### *Private supplies*

#### **General functions of DOE in relation to private supplies**

**118.—**(1) DOE shall—

- (a) take all such steps as it considers appropriate for keeping itself informed about the wholesomeness and sufficiency of private supplies;
- (b) maintain a register of private supplies used for domestic or food production purposes.

(2) Where DOE is satisfied—

- (a) that any private supply used for domestic or food production purposes to any premises is, has been or is likely to become unwholesome or (so far as any such premises are concerned) insufficient for domestic and sanitary purposes; and
- (b) that the unwholesomeness or insufficiency of any such supply is, was or is likely to be such as to cause a danger to life or health;

DOE shall notify the district council for the district, and the Health and Social Services Board for the area, in which the premises are, and the supply is, situated.

(3) DOE may by regulations make such provision, supplementing the provisions of this Article, as DOE considers appropriate for—

- (a) obtaining information about the quality and sufficiency of private supplies, including information as to the source of the supplies and the premises supplied by such supplies;
- (b) regulating the performance of any function under this Article; and
- (c) prescribing the particulars in respect of each private supply to be recorded in the register maintained under paragraph (1)(b).

- (4) Without prejudice to the generality of paragraph (3), regulations under that paragraph may—
- (a) prescribe the matters to be taken into account in determining, for the purposes of paragraph (1), what is appropriate;
  - (b) provide, for the purposes of this Article, for such samples of water to be taken and analysed at such times and in such manner as may be prescribed;
  - (c) provide for functions under this Article to be carried out by prescribed persons;
  - (d) provide for the recovery by DOE from prescribed persons of such amounts as may be prescribed in respect of expenses reasonably incurred by DOE under this Article.

### **Remedial powers in relation to private supplies**

**119.**—(1) Subject to the following provisions of this Article, where DOE is satisfied in relation to any premises which are supplied with water for domestic or food production purposes by means of a private supply—

- (a) that any water which is being, has been or is likely to be supplied for those purposes to those premises by means of that private supply is not, was not or, as the case may be, is likely not to be wholesome; or
- (b) that that private supply is failing, has failed or is likely to fail to provide to any house on those premises such a supply of wholesome water as (so far as that house is concerned) is sufficient for domestic purposes,

DOE may serve a notice in relation to that private supply on one or more of the relevant persons.

- (2) A notice under this Article in relation to a private supply of water to any premises shall—
- (a) give particulars of the matters mentioned in paragraph (1) in respect of which the notice is served;
  - (b) specify the steps which, in the opinion of DOE, are required to be taken for ensuring that there is a supply of water to those premises which is both wholesome and (so far as any house on those premises is concerned) sufficient for domestic purposes;
  - (c) specify a period, ending not less than 28 days after the day on which the notice is served, within which any representations or objections with respect to the notice must be received by DOE; and
  - (d) state the effect in relation to that notice of Article 120(2) and (3).

(3) Subject to Articles 120 and 121, where DOE serves a notice under this Article on any relevant person it may do one or more of the following, that is to say—

- (a) by that notice designate as steps to be taken by DOE itself such of the steps specified in the notice as DOE considers it appropriate so to designate;
- (b) by that notice require that person, within such reasonable period as may be specified in the notice, to take one or more of the steps so specified;
- (c) by that notice require that person, at such times as may be determined in accordance with provision contained in the notice, to make to another relevant person or to DOE such payments as may be so determined in respect of expenses reasonably incurred by that other person or DOE in taking any step specified in the notice;
- (d) by that notice undertake from time to time to make such payments to that person as may be so determined in respect of expenses reasonably incurred by that person in taking any step specified in the notice.

(4) The steps that a relevant person may be required by a notice under this Article to take in relation to any premises shall include—

- (a) requiring a supply of water to be provided to those premises by a water undertaker or by any other person; and
  - (b) taking such steps for the purpose of securing that such a requirement is complied with, and of enabling such a supply to be so provided, as may be specified in the notice.
- (5) For the purposes of this Article and Articles 120 to 122 the relevant persons, in relation to a private supply of water to any premises, are—
- (a) the owners and occupiers of those premises; and
  - (b) the owners and occupiers of the premises where the source of that supply is situated and any other person who exercises powers of management or control in relation to that source;
- and in Articles 120 to 122 a notice under this Article is referred to as a private supply notice.

### **Confirmation of private supply notices**

**120.**—(1) Subject to paragraph (2), a private supply notice served by DOE shall not take effect until the end of the period specified in the notice as the period within which representations or objections with respect to the notice must be received by DOE.

(2) Where any written representation or objection with respect to a private supply notice served by DOE is received by it, before the end of the period specified in the notice, from a person on whom the notice was served, that notice shall not take effect unless—

- (a) the notice is submitted by DOE to the Appeals Commission and is confirmed by the Appeals Commission either with or without modifications; or
- (b) the representation or objection is withdrawn.

(3) If DOE submits a private supply notice to the Appeals Commission for confirmation, the Appeals Commission—

- (a) shall consider whether the notice should be confirmed and whether, if it is confirmed, it should be confirmed with or without modifications;
- (b) may, with respect to the matters specified in the notice or any proposed modification of it, direct DOE to serve a private supply notice, in such terms as may be specified in the direction, on any relevant person who has not previously been served with such a notice;
- (c) if it is satisfied that the person on whom any notice to be served in pursuance of a direction under sub-paragraph (b) has had a proper opportunity of having his representations or objections with respect to the proposal for the direction considered, may dispense, in relation to the notice so served, with the provisions of paragraphs (1) and (2) and of Article 119(2)(c) and (d).

(4) Where the Appeals Commission confirms a private supply notice (whether with or without modifications)—

- (a) DOE shall serve notice of that confirmation on every person originally served with the notice under Article 119; and
- (b) that notice shall take effect, with any modifications made by the Appeals Commission, at such time as may be specified in the notice served under this paragraph.

### **Enforcement and variation of private supply notice**

**121.**—(1) Where any relevant person who is required by virtue of a private supply notice to take any step in relation to any premises fails to take that step within the period specified in the notice, DOE may, in accordance with any applicable provision having effect by virtue of Article 122 or 124, take that step itself.

(2) Where any step is taken by DOE in relation to any premises by virtue of paragraph (1)—

- (a) DOE may recover from the person who failed to take that step within the specified period any expenses reasonably incurred by it in taking that step; and
  - (b) for the purposes of any requirement under which payments are required to be made to that person by any person other than DOE, sums paid by virtue of sub-paragraph (a) in respect of the taking of any step shall be deemed to be expenses incurred in the taking of that step by the person who failed to take it.
- (3) Nothing in this Order shall confer any right of action on any person in respect of any loss or damage sustained by that person in consequence of the failure by any other person to take any step specified in a private supply notice.
- (4) Any sum required to be paid to any person by virtue of any requirement or undertaking contained in a private supply notice shall be recoverable summarily as a civil debt by that person from the person who is required to pay it.
- (5) Any requirement which—
- (a) is imposed by virtue of a private supply notice on the owner or occupier of any premises; and
  - (b) is expressed to bind those premises in relation to the owners or occupiers from time to time,
- shall bind successive owners or, as the case may be, occupiers of those premises and shall be a statutory charge.
- (6) Subject to paragraph (7), DOE may by notice served on any person modify or revoke the effect in relation to that person of any private supply notice or notice under this paragraph (including a notice which has been confirmed, with or without modifications, by the Appeals Commission).
- (7) The person on whom the notice is served may, within 28 days from the date of service of the notice, appeal to the Appeals Commission except where the notice—
- (a) extends the period within which any step is required to be taken by that person; or
  - (b) discharges, postpones or abates any obligation of that person to make a payment to DOE.

### **Powers to do works in relation to private supplies**

**122.**—(1) For the purposes of the taking of any steps falling to be taken by DOE by virtue of a designation under paragraph (3)(a) of Article 119 the provisions of Part VIII shall have effect—

- (a) as if the relevant works powers, so far as conferred on a water undertaker for the purpose of carrying out its functions, were also conferred on DOE for the purpose of ensuring that a supply of water provided by means of a private supply to any premises is both wholesome and (so far as any house on those premises is concerned) sufficient for domestic purposes;
- (b) as if any such power, so far as it is conferred on a water undertaker in relation to things belonging to or operated or used by the undertaker for the purposes of its functions, were conferred by virtue of sub-paragraph (a) on DOE in relation to things belonging to or operated or used by DOE, or a relevant person, in connection with the provision of water by means of a private supply;
- (c) as if references to a water undertaker in any provision of Part VIII relating to a relevant works power, except the references in Articles 243 and 244, included references to DOE; and
- (d) as if the making by any person in pursuance of a private supply notice of any payment in respect of sums incurred in the laying of any pipe entitled that person, for the purposes of Article 241(1), to an interest in the pipe.

(2) Where by virtue of this Order DOE has power to acquire (whether compulsorily or otherwise) any land for the purpose of ensuring that private supplies of water to premises are both wholesome and (so far as houses on those premises are concerned) sufficient for domestic purposes, that power

shall include power to acquire land in order, for that purpose, to dispose of the land to a person who is a relevant person in relation to such a private supply.

(3) In this Article “relevant works powers” means the powers conferred on water undertakers by Articles 219, 220, 222, 224 and 226.

### **Power of DOE to obtain information relating to private supplies**

**123.**—(1) DOE may serve on any person a notice requiring him to furnish DOE, within a period or at times specified in the notice and in a form and manner so specified, with such information as is reasonably required by DOE for the purpose of exercising or performing any power or duty conferred or imposed on DOE by or under any of Articles 118 to 121.

(2) A person who fails without reasonable excuse to comply with the requirements of a notice served on him under paragraph (1) shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

### *Enforcement*

### **Rights of entry**

**124.**—(1) Any person designated for the purpose by the Department or DOE shall, on producing some duly authenticated document showing his authority, have a right at all reasonable hours to enter any premises for the purpose of ascertaining whether there is or has been any contravention of Article 112 in relation to any waterworks on those premises.

(2) Any person designated in writing for the purpose by DOE may—

- (a) enter any premises for the purpose, in relation to any private supply, of—
  - (i) determining whether, and if so in what manner, any power or duty conferred or imposed on DOE by or under any of Articles 118 to 121 should be exercised or performed; or
  - (ii) exercising any such power or performing any such duty;
- (b) carry out such inspections, measurements and tests on premises entered by that person or of articles found on any such premises, and take away such samples of water or of any land or articles, as DOE—
  - (i) considers appropriate for the purposes of any such power or duty; and
  - (ii) has authorised that person to carry out or take away.

(3) Any person designated in writing for the purpose by the Department may—

- (a) enter any premises for the purpose of—
  - (i) ascertaining whether any provision contained in or made or having effect under this Order with respect to any water fittings, or with respect to the waste or misuse of water, is being or has been contravened;
  - (ii) determining whether, and if so in what manner, any power or duty conferred or imposed on any person by regulations under Article 114 should be exercised or performed; or
  - (iii) exercising any such power or performing any such duty; or
- (b) carry out such inspections, measurements and tests on premises entered by that person or on water fittings or other articles found on any such premises, and take away such samples of water or of any land and such water fittings and other articles, as that person has been authorised to carry out or take away in accordance with regulations under that Article.

(4) Part I of Schedule 4 shall apply to the right of entry conferred by paragraph (1); but nothing in that paragraph or in that Part of that Schedule shall entitle any person designated for the purposes of that paragraph by DOE to have access to any waterworks belonging to a water undertaker.

(5) Part II of Schedule 4 shall apply to the rights and powers conferred by paragraphs (2) and (3).

(6) In this Article “waterworks” has the same meaning as in Article 112.

### **Assessors for the enforcement of water quality**

**125.**—(1) The Department may for the purposes of this Article appoint inspectors to act on its behalf in relation to some or all of—

- (a) the powers and duties conferred or imposed on it by or under Articles 107 to 110 and 117 so far as relating to the quality and sufficiency of water supplied by a water undertaker; and
- (b) such other powers and duties in relation to the quality and sufficiency of water supplied by a water undertaker as are conferred or imposed on the Department by or under any other statutory provision.

(2) DOE may for the purposes of this Article appoint inspectors to act on its behalf in relation to some or all of—

- (a) the powers and duties conferred or imposed on it by or under Articles 107 and 118 to 123 in relation to the quality and sufficiency of water supplied by means of a private supply; and
- (b) such other powers and duties in relation to the quality and sufficiency of water supplied by means of a private supply as are conferred or imposed on DOE by or under any other statutory provision.

(3) A person may be appointed under both paragraph (1) and (2); and the Department and DOE (acting jointly) may designate a person so appointed as the Chief Inspector of Drinking Water.

(4) An inspector appointed under paragraph (1) shall—

- (a) carry out such investigations as the Department may require him to carry out for the purpose of—
  - (i) ascertaining whether any duty or other requirement imposed on an undertaker by or under any of Articles 108 to 110 or Article 117 is being, has been or is likely to be contravened; or
  - (ii) advising the Department as to whether, and if so in what manner, any of its powers in relation to such a contravention, or any of the powers (including the powers to make regulations) which are conferred on it by or under any of Articles 107 to 110 and 117 should be exercised; and
- (b) make such reports to the Department with respect to any such investigation as the Department may require.

(5) An inspector appointed under paragraph (2) shall—

- (a) carry out such investigations as DOE may require him to carry out for the purpose of advising DOE as to whether, and if so in what manner, any of its powers (including the powers to make regulations) which are conferred on it by or under any of Articles 107 and 118 to 121 should be exercised; and
- (b) make such reports to DOE with respect to any such investigation as DOE may require.

(6) Without prejudice to the powers conferred by paragraphs (7) and (8), it shall be the duty of a water undertaker—

- (a) to give an inspector appointed under paragraph (1) all such assistance; and
- (b) to provide an inspector so appointed with all such information,

as that inspector may reasonably require for the purpose of carrying out any such investigation as is mentioned in paragraph (4).

(7) An inspector appointed under paragraph (1) who is designated in writing for the purpose by the Department may—

- (a) enter any premises for the purpose of carrying out any such investigation as is mentioned in paragraph (4);
- (b) carry out such inspections, measurements and tests on premises entered by that person or of articles or records found on any such premises, and take away such samples of water or of any land or articles, as that person considers appropriate for the purpose of enabling him to carry out any such investigation; or
- (c) at any reasonable time require any water undertaker to supply him with copies of, or of extracts from, the contents of any records kept for the purpose of complying with any duty or other requirement imposed on that undertaker by or under any of Articles 108 to 110 or Article 117.

(8) An inspector appointed under paragraph (2) who is designated in writing for the purpose by DOE may—

- (a) enter any premises for the purpose of carrying out any such investigation as is mentioned in paragraph (5);
- (b) carry out such inspections, measurements and tests on premises entered by that person or of articles or records found on any such premises, and take away such samples of water or of any land or articles, as that person considers appropriate for the purpose of enabling him to carry out any such investigation.

(9) Part II of Schedule 4 shall apply to the rights and powers conferred by paragraph (7) or (8).

(10) Any water undertaker which fails to comply with the duty imposed on it by virtue of paragraph (6) shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding £20,000;
- (b) on conviction on indictment, to a fine.

(11) Proceedings for an offence under this Article or in relation to the quality and sufficiency of water supplied by a water undertaker may be instituted and carried on in the name of the Chief Inspector of Drinking Water.

## CHAPTER IV

### FLUORIDATION

#### **Fluoridation of water supplies at request of DHSSPS**

**126.**—(1) If requested in writing to do so by DHSSPS, a water undertaker shall enter into arrangements with DHSSPS to increase the fluoride content of the water supplied by that undertaker to premises within the area specified in the arrangements.

(2) But a water undertaker shall not be required by paragraph (1) to enter into any such arrangements until an indemnity with respect to the arrangements has been given by virtue of Article 133 to the water undertaker.

(3) The area specified in arrangements under this Article may be such area comprising the whole or any part of Northern Ireland as DHSSPS may determine.

(4) The arrangements shall be on such terms as may be agreed between DHSSPS and the water undertaker or, in the absence of agreement, determined in accordance with Article 128.

(5) Those terms shall include provision—

- (a) requiring DHSSPS to meet the reasonable capital and operating costs incurred by the water undertaker in giving effect to the arrangements;
- (b) specifying circumstances in which the requirement to increase the fluoride content may be temporarily suspended; and
- (c) for the variation of the arrangements at the request of DHSSPS.

(6) DHSSPS shall consult the Authority in relation to the terms to be included in any arrangements under this Article (in particular, terms which affect the operation of the water undertaker's supply system).

(7) Before carrying out the consultation required by paragraph (1) of Article 132 in relation to a step mentioned in sub-paragraph (a), (b) or (c) of paragraph (2) of that Article, DHSSPS shall consult the water undertaker in question as to whether the arrangements which would result from taking that step would be operable and efficient (or, where it is proposed to terminate the arrangements, as to whether it would be reasonably practicable to do so).

### **Target concentration of fluoride**

**127.**—(1) Arrangements under Article 126(1) shall include provision for securing that, so far as reasonably practicable, the concentration of fluoride in the water supplied to premises in the specified area is maintained at the general target concentration of one milligram per litre.

(2) But the arrangements may provide for the concentration in the specified area (or any part of it) to be lower than that if DHSSPS considers that it is not reasonably practicable to achieve the general target concentration in the specified area (or that part of it).

(3) Any such lower concentration must still be as high as is reasonably practicable in the circumstances.

(4) If, in relation to any area ("area A"), an order under Article 131(1) specifies a general target concentration lower than that for which any arrangements effective there provide (or, by the previous operation of this paragraph, are taken to provide), the arrangements shall have effect from the coming into force of the order as if they provided for the general target concentration specified in the order (subject to the operation again of paragraphs (2) and (3)).

(5) If the result of the operation of paragraph (4) in relation to arrangements in area A is that in an area adjoining area A ("area B") it is not reasonably practicable to maintain the concentration of fluoride in the water supplied by virtue of arrangements made in area B with the same water undertaker, the order shall be taken to extend also to area B so far as those arrangements are concerned, and paragraph (4) shall apply accordingly.

(6) An order under Article 131(1) which in relation to any area specifies a general target concentration higher than that for which any arrangements effective there provide (or are taken to provide by virtue of paragraph (4) or (5)) does not have effect to increase the concentration for which the arrangements provide (or are taken to provide).

(7) In this Article "specified area" means the area specified in arrangements under Article 126(1).

### **Fluoridation arrangements: determination of terms**

**128.**—(1) This Article applies if DHSSPS and a water undertaker fail to agree—

- (a) the terms of arrangements requested by DHSSPS pursuant to paragraph (1) of Article 126; or
- (b) a variation in the terms of those arrangements following a request by DHSSPS pursuant to paragraph (5)(c) of that Article.

(2) DHSSPS may refer the matter to the Authority for determination and following such a reference—



- (a) the Authority may determine the terms of the arrangements as it sees fit; and
  - (b) the determination of the Authority shall be final.
- (3) Following determination under this Article of the terms to be included in any arrangements—
- (a) DHSSPS shall give notice of the determination to the water undertaker in question; and
  - (b) the undertaker shall be deemed to have entered into the arrangements under Article 126(1) on the terms determined under this Article with effect from the day after the date of the notice.
- (4) References in this Chapter to arrangements entered into under Article 126(1) shall include arrangements deemed to have been entered into under that Article by virtue of paragraph (3)(b).

### **Fluoridation arrangements: compliance**

**129.**—(1) It shall be the duty of each water undertaker to comply with any arrangements entered into by it under Article 126(1).

(2) Where, pursuant to any such arrangements, the fluoride content of any water is increased, the increase may be effected only by the addition of one or more of the following compounds of fluorine—

- (a) hexafluorosilicic acid ( $\text{H}_2\text{SiF}_6$ );
- (b) disodium hexafluorosilicate ( $\text{Na}_2\text{SiF}_6$ ).

(3) Subject to paragraph (4), water to which fluoride has been added pursuant to any such arrangements entered into by a water undertaker (with a view to its supply in an area) may be supplied by that or any other undertaker to premises in any other area (whether or not that other area is the subject of arrangements under Article 126(1)).

(4) Paragraph (3) applies if (and only if) the undertaker or undertakers concerned consider that it is necessary for the water to be supplied in the other area—

- (a) for the purpose of dealing with any serious deficiency in supply; or
- (b) in connection with the carrying out of any works (including cleaning and maintenance) by the undertaker concerned or, as the case may be, by the undertakers concerned.

(5) In paragraph (4) “serious deficiency in supply” means any existing or threatened serious deficiency in the supply of water (whether in quantity or quality) caused by an exceptional lack of rain or by any accident or unforeseen circumstances.

(6) Arrangements entered into under Article 126(1) with a water undertaker shall remain in force until DHSSPS terminates them by order.

(7) An order shall not be made under paragraph (6) unless—

- (a) DHSSPS has consulted the water undertaker in question; and
- (b) a draft of the order has been laid before, and approved by resolution of, the Assembly.

### **Power to vary permitted fluoridation agents**

**130.** DHSSPS may by order subject to negative resolution amend Article 129(2) by—

- (a) adding a reference to another compound of fluorine; or
- (b) removing any reference to a compound of fluorine.

### **Power to vary target concentration of fluoride**

**131.**—(1) DHSSPS may by order provide that Article 127(1) is to have effect as if for “one milligram per litre” there were substituted a lower concentration specified in the order.

(2) An order under paragraph (1) may make different provision for different geographical areas, or for some such areas and not others.

(3) An order shall not be made under paragraph (1) unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

### **Consultation**

**132.**—(1) Before taking any step mentioned in paragraph (2), DHSSPS shall—

- (a) consult and ascertain opinion in accordance with regulations made by DHSSPS;
- (b) comply with the requirements set out in regulations made by DHSSPS.

(2) The steps are—

- (a) requesting a water undertaker to enter into arrangements under Article 126(1);
- (b) requesting a water undertaker to vary any such arrangements in, or except in, prescribed circumstances or cases;
- (c) laying before the Assembly an order under Article 129(6) terminating any such arrangements;
- (d) maintaining any such arrangements in prescribed circumstances.

(3) Regulations—

- (a) under sub-paragraph (a) of paragraph (1) shall include provision about the process which DHSSPS is to follow for the purposes of that sub-paragraph;
- (b) under sub-paragraph (b) of that paragraph shall include provision about the requirements which must be satisfied (with respect to the outcome of that process or otherwise) before a step mentioned in paragraph (2) may be taken.

(4) Paragraph (1) shall not apply in relation to a proposal by DHSSPS to take the step mentioned in paragraph (2)(b) if DHSSPS so directs by an instrument in writing (and such a direction may apply either generally or in relation to a particular proposal).

### **Indemnities in respect of fluoridation**

**133.**—(1) DHSSPS may, with the consent of DFP, agree to indemnify any water undertaker in respect of liabilities which it may incur in complying with arrangements entered into by it pursuant to Article 126(1).

(2) DHSSPS may by regulations make provision with respect to—

- (a) the matters in respect of which an indemnity may be given under paragraph (1);
- (b) the form and terms of any such indemnity; and
- (c) such ancillary matters as it sees fit.

### **Review of fluoridation**

**134.**—(1) Where DHSSPS has entered into arrangements under Article 126(1), it shall—

- (a) monitor the effects of the arrangements on the health of persons living in the area specified in the arrangements; and
- (b) in accordance with paragraph (3) publish reports containing an analysis of those effects.

(2) DHSSPS shall make available—

- (a) any information collected by it for the purposes of paragraph (1); or
- (b) summaries of that information.

- (3) DHSSPS shall publish a report under paragraph (1)(b)—
- (a) within the period of 4 years beginning with the date on which the arrangements come into force; and
  - (b) within each period of 4 years beginning with the date on which the last such report was published.
- (4) This Article ceases to apply in relation to any arrangements under Article 126(1) if those arrangements are terminated.

## CHAPTER V

### SUPPLEMENTAL PROVISIONS OF PART IV

#### Power to give effect to international agreements

**135.**—(1) Subject to paragraph (3), the Department may by regulations provide that the provisions of Chapters I to III shall have effect with such modifications as may be prescribed for the purpose of enabling Her Majesty's Government in the United Kingdom to give effect—

- (a) to any Community obligations; or
- (b) to any international agreement to which the United Kingdom is for the time being a party.

(2) DOE may by regulations provide that the provisions to which paragraph (3) applies shall have effect with such modifications as may be prescribed for the purpose of enabling Her Majesty's Government in the United Kingdom to give effect—

- (a) to any Community obligations; or
- (b) to any international agreement to which the United Kingdom is for the time being a party.

(3) Paragraph (2) applies to—

- (a) Article 107(2);
- (b) Articles 118 to 123; and
- (c) any other provisions of Chapter III so far as they have effect for the purposes of or in relation to those Articles.

(4) Paragraph (1) shall not authorise any modification of—

- (a) any provision to which paragraph (2) applies;
- (b) any of Articles 111, 112 and 116; or
- (c) any other provisions of Chapters I to III so far as they have effect for the purposes of or in relation to those Articles.

#### Interpretation

**136.**—(1) In this Part—

“connection notice” shall be construed in accordance with Article 79(10);

“consumer”, in relation to a supply of water provided by a water undertaker to any premises, means a person who is for the time being the person on whom liability to pay charges to the undertaker in respect of that supply of water would fall;

“food production purposes” means the manufacturing, processing, preserving or marketing purposes with respect to food or drink for which water supplied to food production premises may be used, and for the purposes of this definition “food production premises” means premises used for the purposes of a business of preparing food or drink for consumption otherwise than on the premises;

“necessary works” includes works carried out, in exercise of any power conferred by or under any statutory provision, by a person other than a water undertaker;

“private supply” means, subject to paragraph (2), a supply of water provided otherwise than by a water undertaker (including a supply provided for the purposes of the bottling of water);

“private supply notice” shall be construed in accordance with Article 119(5);

“water fittings” includes pipes (other than water mains), taps, cocks, valves, ferrules, meters, cisterns, baths, water closets, soil pans and other similar apparatus used in connection with the supply and use of water;

“wholesome” shall be construed subject to the provisions of any regulations made under Article 107.

(2) For the purposes of any reference in this Part to a private supply, or to supplying water by means of a private supply, water shall be treated as supplied to any premises not only where it is supplied from outside those premises, but also where it is abstracted, for the purpose of being used or consumed on those premises, from a source which is situated on the premises themselves; and for the purposes of this paragraph water shall be treated as used on any premises where it is bottled on those premises for use or consumption elsewhere.

(3) For the purposes of this Part a service pipe shall be treated as connected with a water main other than a trunk main even if the connection is an indirect connection made by virtue of a connection with another service pipe.

(4) The rights conferred by virtue of this Part as against the owner or occupier of any premises shall be without prejudice to any rights and obligations, as between themselves, of the owner and occupier of the premises.

## PART V

### USE OF WATER

#### CHAPTER I

#### DROUGHT

##### *Drought orders*

#### **Power to make drought orders**

**137.**—(1) If the Department is satisfied that, by reason of an exceptional shortage of rain, there exists or is threatened—

- (a) a serious deficiency of supplies of water in any area; or
- (b) such a deficiency in the flow or level of water in any inland waters as to pose a serious threat to any of the flora or fauna which are dependent on those waters,

then, subject to the following provisions of this Chapter, it may by order (in this Chapter referred to as a “drought order”) make such provision authorised by this Chapter as appears to the Department to be expedient with a view to meeting the deficiency.

(2) Subject to Article 139(2), the power to make a drought order in relation to any area shall not be exercisable unless an application is made to the Department—

- (a) in the case of a drought order under paragraph (1)(a), by a water undertaker which supplies water to premises in that area, after consultation with DOE;
- (b) in the case of a drought order under paragraph (1)(b), by—

- (i) DARD or DCAL, after consultation with DOE; or
- (ii) DOE.

(3) Schedule 5 shall have effect with respect to the procedure on an application for a drought order.

### **Provisions and duration of drought order**

**138.**—(1) A drought order may contain any of the following provisions—

- (a) provision authorising any person (including a water undertaker) to take water from any source specified in the order subject to any conditions or restrictions so specified;
- (b) provision authorising a water undertaker to prohibit or limit the use of water for any purpose specified in the order, being a purpose for the time being set out in a direction given by the Department to water undertakers generally as a purpose which may be specified by virtue of this sub-paragraph in any drought order;
- (c) provision authorising a water undertaker to discharge water to any place specified in the order subject to any conditions or restrictions so specified;
- (d) provision authorising DOE to prohibit or limit the taking by any person of water from a source specified in the order if DOE is satisfied that the taking of water from that source seriously affects the supplies available to a water undertaker;
- (e) provision suspending or modifying, subject to any conditions specified in the order, any restriction or obligation to which a water undertaker or a sewerage undertaker or any other person is subject as respects—
  - (i) the taking of water from any source;
  - (ii) the discharge of water;
  - (iii) the supply of water (whether in point of quantity, pressure, quality, means of supply or otherwise); or
  - (iv) the filtration or other treatment of water;
- (f) provision authorising DOE to suspend or vary, or attach conditions to, any consent specified in the order for the discharge of any effluent by any person, including any relevant undertaker.

(2) The period for which—

- (a) an authorisation given by or under a drought order;
- (b) a prohibition or limitation imposed by or under a drought order; or
- (c) a suspension or modification effected by or under a drought order,

has effect shall expire before the end of the period of 3 months beginning with the day on which the order comes into operation, unless that period of 3 months is extended, in relation to that order, by virtue of the exercise by the Department of its power (subject to paragraph (3)) to amend the order.

(3) The power of the Department to amend a drought order shall not be exercised so as to extend the period of 3 months mentioned in paragraph (2) beyond the end of the period of 9 months beginning with the day on which that order came into operation.

(4) Without prejudice to the following provisions of this Chapter, a drought order may—

- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
- (b) contain such supplemental, consequential and transitional provision as the Department considers appropriate.

### **Provisions of drought order restricting use of water**

**139.**—(1) The following provisions apply where a drought order contains a provision authorising a water undertaker to prohibit or limit the use of water—

- (a) the power may be exercised in relation to consumers generally, a class of consumer or a particular consumer;
- (b) the water undertaker shall take such steps as it thinks appropriate for bringing the prohibition or limitation to the attention of the persons to whom the prohibition or limitation will apply and, in particular, shall (as the undertaker thinks appropriate)—
  - (i) cause notice of the prohibition or limitation to be published in at least two newspapers circulating within that part of the water undertaker's area which would be affected by the provision of the order; or
  - (ii) send notice of the prohibition or limitation to the persons to whom the prohibition or limitation will apply;
- (c) the prohibition or limitation shall not come into operation until the end of the period of 72 hours beginning with the day on which the notice is published or, as the case may be, sent to the person in question.

(2) Where any purpose set out in a direction given for the purposes of Article 138(1)(b) will cease, by virtue of the variation or revocation of the direction, to be one which may be specified in a drought order, the Department shall (without an application having been made to it) exercise its power to vary or revoke drought orders, in so far as any orders in operation will be affected by the variation or revocation of the direction, so as to make those orders conform to the variation or reflect the revocation.

(3) The revocation or variation of a direction given for the purposes of Article 138(1)(b) by a further direction shall not affect either—

- (a) the validity of anything done in pursuance of a drought order before the giving of the further direction; or
- (b) any obligation or liability accrued or incurred before the giving of the further direction.

### **Provisions of drought order with respect to abstraction and discharges**

**140.**—(1) Any drought order which—

- (a) authorises the taking of water from a source from which water is supplied to an inland navigation; or
- (b) suspends or modifies—
  - (i) a restriction as respects the taking of water from a source from which water is supplied to an inland navigation; or
  - (ii) an obligation to discharge compensation water into a canal or into any river or stream which forms part of, or from which water is supplied to, an inland navigation,

may include provision for prohibiting or imposing limitations on the taking of water from the inland navigation or for the suspension or modification of any obligation to which a navigation authority is subject as respects the discharge of water from the inland navigation.

(2) A prohibition or limitation by or under a drought order on the taking of water from any source may be imposed so as to have effect in relation to a source from which a person to whom the prohibition or limitation applies has a right to take water whether by virtue of a statutory provision, an agreement or the ownership of land.

(3) Where a drought order made on the application of a water undertaker confers power on DOE—

(a) to prohibit or limit the taking of water from any source; or  
(b) to suspend or vary, or attach conditions to, any consent for the discharge of any effluent,  
DOE shall exercise that power in such manner as will ensure, so far as reasonably practicable, that  
the supplies of water available to the water undertaker are not seriously affected.

(4) Where—

- (a) any drought order confers power on DOE to suspend or vary, or attach conditions to, any  
consent for the discharge of any effluent; and
- (b) DOE exercises that power so as to restrict the discharge of effluent by a sewerage  
undertaker,

the sewerage undertaker may so modify any consents or agreements relating to the discharge by  
other persons of trade effluent as to enable it to comply with any requirements or conditions imposed  
on it by or under the order with respect to discharges from sewers or works of the undertaker.

(5) In this Article—

“compensation water” means water which a water undertaker or any other person is under an  
obligation to discharge—

- (a) in accordance with the provisions of a licence under Article 20 of the 1999 Order into  
any watercourse or underground strata; or
- (b) under any local statutory provision, into any river, stream or other running water or into  
a canal; and

“inland navigation” includes any canal or navigable river.

### **Works under drought orders**

**141.**—(1) A drought order may authorise a water undertaker, subject to any conditions and  
restrictions specified in the order, to carry out any works required for the performance of any duty  
or the exercise of any power which is imposed or conferred by or under the order.

(2) A drought order authorising a water undertaker to carry out any works—

- (a) may authorise that undertaker for that purpose to enter any land specified in the order and  
to occupy and use the land to such extent and in such manner as may be necessary for the  
carrying out and maintenance of the works; and
- (b) may apply in relation to the carrying out of the works such of the provisions of Part VIII  
as appear to the Department to be appropriate, subject to such modifications as may be  
specified in the order.

(3) The Department shall include in any drought order authorising a water undertaker to enter  
any land provisions requiring that undertaker to give to the occupier of the land and to such other  
persons concerned with the land as may be specified in the order not less than 24 hours' notice of  
any intended entry.

(4) Subject to paragraph (3), a drought order may make any such provision in relation to  
provisions of the order authorising any person to enter any land as corresponds to provision contained  
in Part II of Schedule 4.

(5) Any works to be carried out under the authority of a drought order shall be included in  
the definition of emergency works in Article 6 of the [Street Works \(Northern Ireland\) Order 1995](#)  
(NI 19).

### **Compensation and charges where drought order made**

**142.**—(1) Schedule 6 shall have effect with respect to the payment of compensation where a drought order has been made.

(2) Except as provided by Schedule 6, neither DOE nor any water undertaker or sewerage undertaker shall incur any liability to any person for loss or damage sustained by reason of anything done in pursuance of any drought order or of any omission in pursuance of such an order.

(3) Nothing in any drought order shall affect the right of DOE, a water undertaker or a sewerage undertaker, in the event of an interruption or diminution of the supply of water, to recover any fixed or minimum charge which might have been recovered from any person by DOE or that undertaker if there had been no such interruption or diminution.

(4) Where a water undertaker makes an application for a drought order, the Department may recover from the water undertaker any expenses (whether of a revenue or capital nature)—

- (a) in connection with any local inquiry held in respect of the application;
- (b) in the exercise of the Department's functions so far as their exercise is attributable to the application and (if the order is made) to the order,

in so far as those expenses have not been recovered (whether from the water undertaker or not) under any other statutory provision.

### **Offences against drought order**

**143.**—(1) If any person—

- (a) takes or uses water in contravention of a prohibition or limitation imposed by or under any drought order or takes or uses water otherwise than in accordance with any condition or restriction so imposed; or
- (b) discharges water otherwise than in accordance with any condition or restriction imposed by or under a drought order,

he shall be guilty of an offence.

(2) If any person—

- (a) fails to construct or maintain in good order a gauge, weir or other apparatus for measuring the flow of water which he was required to construct or maintain by any drought order; or
- (b) fails to allow some person authorised for the purpose by or under a drought order to inspect and examine any such apparatus or any records made thereby or kept by that person in connection therewith or to take copies of any such records,

he shall be guilty of an offence.

(3) In any proceedings against any person for an offence under this Article it shall be a defence for that person to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(4) A person who is guilty of an offence under this Article shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

### *Interpretation*

### **Interpretation of this Chapter**

**144.** In this Chapter—



- (a) references to the taking of water include references to the collection, impounding, diversion or appropriation of water; and
- (b) references to an obligation or to a restriction include references to an obligation or, as the case may be, to a restriction which is imposed by or under any statutory provision (including this Order) or any agreement.

## CHAPTER II

### PROMOTION OF THE EFFICIENT USE OF WATER

#### **Duty to promote efficient use of water**

**145.**—(1) It shall be the duty of every water undertaker to promote the efficient use of water by its customers.

(2) The duty of a water undertaker under this Article shall be enforceable under Article 30—

- (a) by the Department; or
- (b) with the consent of or in accordance with a general authorisation given by the Department, by the Authority.

(3) Nothing in this Part shall have effect to authorise or require a water undertaker to impose any requirement on any of its customers or potential customers.

#### **Power of the Authority to impose requirements on water undertakers**

**146.**—(1) The Authority may require a water undertaker, in its performance of its duty under Article 145, to—

- (a) take any such action; or
- (b) achieve any such overall standards of performance,

as the Authority may specify in the document imposing the requirement.

(2) Where the Authority, in the document imposing a requirement on a water undertaker under paragraph (1), stipulates that any contravention of the requirement by the undertaker will be a breach of its duty under Article 145, any contravention of that requirement by the undertaker shall be a breach of that duty.

(3) Without prejudice to the generality of paragraph (1), a requirement under that paragraph may—

- (a) require a water undertaker to make available to its customers or potential customers such facilities as may be specified in the document imposing the requirement;
- (b) require a water undertaker to provide or make available to its customers or potential customers such information as may be specified in the document imposing the requirement, and may specify the form in which, the times at which or the frequency with which any such information is to be provided or made available.

(4) In exercising its powers under this Article in relation to any water undertaker, the Authority shall have regard to the extent to which water resources are available to that undertaker.

(5) Before imposing any requirement on a water undertaker under paragraph (1) the Authority shall consult that undertaker.

(6) Nothing in this Article authorises the Authority to impose any requirement on a water undertaker which has or may have the effect of authorising or requiring that undertaker to impose any requirement on any of its customers or potential customers.

### **Publicity of requirements imposed under Article 146**

**147.**—(1) Where, under Article 146(1), the Authority imposes any requirement on a water undertaker, the Authority may arrange for that requirement to be publicised in any such manner as the Authority may consider appropriate for the purpose of bringing it to the attention of that undertaker's customers.

(2) Without prejudice to the generality of paragraph (1), the Authority may arrange for such publicising of the requirement as is mentioned in that paragraph by—

- (a) itself publicising the requirement or causing it to be publicised; or
- (b) directing the undertaker to inform or arrange to inform its customers of the requirement.

### **Information as to compliance with requirements under Article 146**

**148.**—(1) Where a water undertaker is subject to any requirement imposed under Article 146(1), the Authority may arrange for there to be given to the customers of that undertaker at such times or with such frequency, and in any such manner, as the Authority may consider appropriate, such information about the level of performance achieved by the undertaker in relation to that requirement as appears to the Authority to be expedient to be given to those customers.

(2) Without prejudice to the generality of paragraph (1), the Authority may arrange for such giving of information as is mentioned in that paragraph by—

- (a) itself disseminating the information or causing it to be disseminated; or
- (b) directing the undertaker to give or arrange to give the information to its customers.

(3) At such times and in such form or manner as the Authority may direct, a water undertaker shall provide the Authority with such information as may be specified in the direction in connection with the undertaker's performance in relation to any requirement imposed upon the undertaker under Article 146(1).

(4) A water undertaker who fails without reasonable excuse to do anything required of him by paragraph (3) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## **PART VI**

### **SEWERAGE SERVICES**

#### **CHAPTER I**

#### **GENERAL FUNCTIONS OF SEWERAGE UNDERTAKERS**

##### *Principal duties and standards of performance*

#### **General duty to provide sewerage system**

**149.**—(1) It shall be the duty of every sewerage undertaker—

- (a) to provide, improve and extend such a system of public sewers (whether inside its area or elsewhere) and so to cleanse and maintain those sewers and any lateral drains which belong to or vest in the undertaker as to ensure that that area is and continues to be effectually drained; and
- (b) to make provision for the emptying of those sewers and such further provision (whether inside its area or elsewhere) as is necessary from time to time for effectually dealing, by means of waste water treatment works or otherwise, with the contents of those sewers.

(2) It shall be the duty of a sewerage undertaker in performing its duty under paragraph (1) to have regard—

- (a) to its existing and likely future obligations to allow for the discharge of trade effluent into its public sewers; and
- (b) to the need to provide for the disposal of trade effluent which is so discharged.

(3) The duty of a sewerage undertaker under paragraph (1) shall be enforceable under Article 30—

- (a) by the Department; or
- (b) with the consent of or in accordance with a general authorisation given by the Department, by the Authority.

(4) The obligations imposed on a sewerage undertaker by the following Chapters of this Part, and the remedies available in respect of contraventions of those obligations, shall be in addition to any duty imposed or remedy available by virtue of any provision of this Article or Article 150 and shall not be in any way qualified by any such provision.

(5) In this Article “trade effluent” has the same meaning as in Chapter III of this Part; and, accordingly, Article 198 shall have effect for the purposes of this Article as it has effect for the purposes of Chapter III of this Part.

#### **Standards of performance in connection with provision of sewerage services**

**150.**—(1) For the purpose—

- (a) of facilitating the determination of the extent to which breaches of the obligations imposed by virtue of the following provisions of this Part are to amount to breaches of the duty imposed by Article 149; or
- (b) of supplementing that duty by establishing overall standards of performance in relation to the provision of sewerage services by any sewerage undertaker,

the Department may, in accordance with Article 152, by regulations provide for contraventions of such requirements as may be prescribed to be treated for the purposes of this Order as breaches of that duty.

(2) The Department may, in accordance with Article 152, by regulations prescribe such standards of performance in connection with the provision of sewerage services as, in its opinion, ought to be achieved in individual cases.

(3) Regulations under paragraph (2) may provide that, if a sewerage undertaker fails to meet a prescribed standard, it shall pay such amount as may be prescribed to any person who is affected by the failure and is of a prescribed description.

(4) Without prejudice to the generality of the power conferred by paragraph (2), regulations under that paragraph may—

- (a) include in a standard of performance a requirement for a sewerage undertaker, in prescribed circumstances, to inform a person of his rights by virtue of any such regulations;
- (b) provide for any dispute under the regulations to be referred by either party to the dispute to the Authority;
- (c) make provision for the procedure to be followed in connection with any such reference and for the Authority’s determination on such a reference to be enforceable in such manner as may be prescribed;
- (d) prescribe circumstances in which a sewerage undertaker is to be exempted from requirements of the regulations.

(5) Where the Authority determines any dispute in accordance with regulations under this Article it shall, in such manner as may be specified in the regulations, give its reasons for reaching its decision with respect to the dispute.

### **Information with respect to levels of performance**

**151.**—(1) The Authority shall from time to time collect information with respect to—

- (a) the compensation paid by sewerage undertakers under regulations under Article 150(2); and
- (b) the levels of overall performance achieved by sewerage undertakers in connection with the provision of sewerage services.

(2) At such times as the Authority may direct, each sewerage undertaker shall give the following information to the Authority—

- (a) as respects each standard prescribed by regulations under Article 150(2), the number of cases in which compensation was paid and the aggregate amount or value of that compensation; and
- (b) as respects each standard established by regulations under Article 150(1)(b), such information with respect to the level of performance achieved by the undertaker as may be prescribed.

(3) A sewerage undertaker which without reasonable excuse fails to do anything required of it by paragraph (2) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) The Authority shall, at least once in every year, arrange for the publication, in such form and in such manner as it considers appropriate, of such of the information collected by or given to the Authority under this Article as it may appear to the Authority expedient to give to customers or potential customers of sewerage undertakers.

(5) In arranging for the publication of any such information the Authority shall have regard to the need for excluding, so far as practicable—

- (a) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual; and
- (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or not, where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that body.

### **Procedure for regulations under Article 150**

**152.**—(1) The Department shall not make any regulations under Article 150 unless—

- (a) the Authority has made to the Department a written application complying with paragraph (3);
- (b) the Department is satisfied that a copy of the application has been served by the Authority on—
  - (i) every sewerage undertaker specified in the application; and
  - (ii) persons or bodies appearing to the Department to be representative of persons likely to be affected by the regulations;
- (c) such period as the Department considers appropriate has been allowed for the making—
  - (i) by the Authority; or

- (ii) by any affected sewerage undertaker or person or body on whom a copy of the application has been served under sub-paragraph (b)(ii),
  - of representations or objections with respect to the Authority's proposals and any modifications proposed by the Department; and
  - (d) the Department has considered the summary mentioned in paragraph (3)(c), the Authority's reasons for its proposals and every representation or objection which has been duly made with respect to those proposals, or any proposed modifications of those proposals, and has not been withdrawn.
- (2) Before making an application to the Department under this Article the Authority shall arrange for such research as it considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and consider the results.
- (3) An application made by the Authority to the Department complies with this paragraph if it—
- (a) sets out the draft provisions proposed by the Authority for inclusion in regulations under Article 150;
  - (b) specifies the sewerage undertaker or undertakers in relation to which it is proposed those provisions should apply;
  - (c) is accompanied by a written summary of the results of the research carried out in accordance with paragraph (2); and
  - (d) summarises the Authority's reasons for its proposals.
- (4) The Department shall not make any regulations under Article 150 except where—
- (a) the only provisions of the regulations are those proposed by the Authority in its application or those provisions with such modifications as the Department considers appropriate; and
  - (b) each of the modifications (if any) of the Authority's proposals to which effect is given by the regulations is a modification the proposal to make which has been notified—
    - (i) to the Authority; and
    - (ii) to any sewerage undertaker appearing to the Department to be likely to be affected by the modifications.

### **Information to be given to customers about overall performance**

**153.**—(1) Each sewerage undertaker shall, in such form and manner and with such frequency as the Authority may direct, take steps to inform its customers of—

- (a) the standards of overall performance established under Article 150(1)(b) which are applicable to that undertaker; and
  - (b) that undertaker's level of performance as respects each of those standards.
- (2) In giving any such direction, the Authority shall not specify a frequency of less than once in every period of 12 months.
- (3) The duty of a sewerage undertaker to comply with this Article shall be enforceable by the Authority under Article 30.

## CHAPTER II

### PROVISION OF SEWERAGE SERVICES

#### *Requisition of public sewer or lateral drain*

#### **Duty to comply with sewer and lateral drain requisition**

**154.**—(1) It shall be the duty of a sewerage undertaker (in accordance with Article 156) to provide a public sewer to be used for the drainage for domestic purposes of premises in a particular locality in its area if—

- (a) the undertaker is required to provide the sewer by a notice served on the undertaker by the owner or occupier of any premises in that locality;
- (b) the premises in that locality the drainage of which would be by means of that sewer are—
  - (i) premises on which there are buildings; or
  - (ii) premises on which there will be buildings when proposals made by any person for the erection of any buildings are carried out; and
- (c) the conditions specified in Article 155 are satisfied in relation to that requirement.

(2) It shall be the duty of a sewerage undertaker (in accordance with Article 156) to provide a lateral drain to communicate with a public sewer and to be used for the drainage for domestic purposes of premises in its area if—

- (a) the undertaker is required to provide the lateral drain by a notice served on the undertaker by the owner or occupier of premises the drainage of which would be by means of that lateral drain;
- (b) the premises the drainage of which would be by means of that lateral drain are—
  - (i) premises on which there are buildings; or
  - (ii) premises on which there will be buildings when proposals made by any person for the erection of any buildings are carried out; and
- (c) the conditions specified in Article 155 are satisfied in relation to that requirement.

(3) The duty of a sewerage undertaker under this Article to provide a public sewer or a lateral drain shall be owed to the person who requires the provision of the sewer or lateral drain or, as the case may be, to each of the persons who joins in doing so.

(4) Where a duty is owed by virtue of paragraph (3) to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a sewerage undertaker in pursuance of this paragraph, it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.

(5) In this Article the reference to domestic purposes, in relation to the drainage of premises to which a requirement under this Article relates, is a reference—

- (a) where there are buildings on those premises, to such domestic sewerage purposes as are specified in relation to those buildings in the requirement; and
- (b) where any person is proposing to erect buildings on those premises, to such domestic sewerage purposes as are so specified in relation to the buildings and to times after the erection of the buildings.

### **Financial conditions of compliance**

**155.**—(1) The conditions mentioned in Article 154(1)(c) and (2)(c) are satisfied in relation to a requirement for the provision of a public sewer or, as the case may be, lateral drain by a sewerage undertaker if—

- (a) such undertakings as the undertaker may have reasonably required in accordance with paragraph (2) have been given by the person or persons who have required the provision of the sewer or lateral drain; and
- (b) such security as the undertaker may have reasonably required has been provided for the discharge of any obligations imposed by those undertakings on any person who, under paragraph (3), may be required to secure his undertakings.

(2) The undertakings which a sewerage undertaker may require for the purposes of paragraph (1) in respect of any public sewer or lateral drain are undertakings which—

- (a) bind the person or persons mentioned in that paragraph to pay to the undertaker the reasonable costs of providing that sewer or lateral drain, as determined in accordance with the undertaker's charges scheme; and
- (b) in the case of undertakings binding two or more persons, bind them either jointly and severally or with liability to pay apportioned in such manner as they may agree.

(3) For the purposes of paragraph (1)(b) a person may be required to secure his undertakings in relation to the provision of a public sewer or, as the case may be, lateral drain if he is not a public authority.

(4) Where for the purposes of paragraph (1)(b) any sums have been deposited with a sewerage undertaker by way of security for the discharge of any obligation, the undertaker shall pay interest at such rate as may be determined either—

- (a) by the undertaker with the approval of the Authority; or
- (b) in default of a determination under sub-paragraph (a), by the Authority,

on every sum so deposited for every three months during which it remains in the hands of the undertaker.

(5) An approval or determination given or made by the Authority for the purposes of paragraph (4) —

- (a) may be given or made in relation to the provision of a particular public sewer or lateral drain, in relation to the provision of public sewers or lateral drains of a particular description or in relation to the provision of public sewers or lateral drains generally; and
- (b) may be revoked at any time.

(6) Any dispute between a sewerage undertaker and any other person as to—

- (a) the undertakings or security required by the undertaker for the purposes of this Article; or
- (b) the amount required to be paid in pursuance of any such undertaking,

may be referred to the Authority for determination under Article 61 by either party to the dispute.

### **Determination of completion date and route for requisitioned sewer or lateral drain**

**156.**—(1) A sewerage undertaker shall not be in breach of a duty imposed by Article 154 in relation to any locality or (in the case of a lateral drain) in relation to any premises unless—

- (a) the period of 6 months beginning with the relevant day has expired; and
- (b) the sewerage undertaker has not, before the end of that period, so laid (as the case may be)—

- (i) the public sewer to be provided as to enable drains and private sewers to be used for the drainage of premises in the locality to communicate with the public sewer; or
  - (ii) the lateral drain to be provided as to enable the drain to be used for the drainage of premises to communicate with a public sewer vested in that undertaker,

at the place or places determined under paragraph (3).
- (2) The period mentioned in paragraph (1)(a) may be extended—
  - (a) by agreement between the undertaker and the person or persons who required the provision of the public sewer or, as the case may be, lateral drain; or
  - (b) where there is a dispute as to whether the period should be extended, by the Authority on a reference under paragraph (4).
- (3) The places mentioned in paragraph (1)(b) shall be—
  - (a) such place or places as are determined by agreement between the sewerage undertaker and the person or persons who required the provision of the public sewer or, as the case may be, lateral drain; or
  - (b) in default of agreement, such place or places as are determined by the Authority on a reference under paragraph (4) to be the place or places at which it is reasonable, in all the circumstances—
    - (i) in relation to the provision of a public sewer, for drains or private sewers to be used for the drainage of premises in the locality in question to communicate with the public sewer; or
    - (ii) in relation to the provision of a lateral drain, for the lateral drain to communicate with a public sewer vested in the undertaker and for the remainder of the drain of which the lateral drain forms part to connect with the lateral drain.
- (4) A reference for the purposes of paragraph (2) or (3) may be made to the Authority for determination under Article 61 by either party to the dispute.
- (5) In this Article “relevant day”, in relation to a requirement to provide a public sewer for any locality or, as the case may be, a lateral drain, means the day after whichever is the later of the following—
  - (a) the day on which the conditions specified in Article 155 are satisfied in relation to the requirement; and
  - (b) the day on which the place or places where (as the case may be)—
    - (i) drains or private sewers to be used for the drainage of premises in that locality will communicate with the public sewer; or
    - (ii) the lateral drain will communicate with a public sewer and the remainder of the drain will connect with the lateral drain,

are determined under paragraph (3).

*Provision of sewers other than by requisition*

**Further duty to provide sewers**

**157.**—(1) Without prejudice to Article 154, it shall be the duty of a sewerage undertaker to provide a public sewer to be used for the drainage for domestic sewerage purposes of premises in a particular locality in its area if the conditions specified in paragraph (2) are satisfied.

- (2) The conditions mentioned in paragraph (1) are—



- (a) that the premises in question, or any of those premises, are premises on which there are buildings;
- (b) that the drains or sewers used for the drainage for domestic sewerage purposes of the premises in question do not, either directly or through an intermediate drain or sewer, connect with a public sewer; and
- (c) that the drainage of any of the premises in question is giving, or is likely to give, rise to such adverse effects to the environment or amenity that it is appropriate, having regard to any guidance issued under this Article by the Department and all other relevant considerations, to provide a public sewer for the drainage for domestic purposes of the premises in question.

(3) Without prejudice to the generality of paragraph (2)(c), regard shall be had to the following considerations, so far as relevant, in determining whether it is appropriate for any sewer to be provided by virtue of this Article—

- (a) the geology of the locality in question or of any other locality;
- (b) the number of premises, being premises on which there are buildings, which might reasonably be expected to be drained by means of that sewer;
- (c) the costs of providing that sewer;
- (d) the nature and extent of any adverse effects to the environment or amenity arising, or likely to arise, as a result of the premises, or, as the case may be, the locality in question not being drained by means of a public sewer; and
- (e) the extent to which it is practicable for those effects to be overcome otherwise than by the provision (whether by virtue of this Article or otherwise) of public sewers, and the costs of so overcoming those effects.

(4) Guidance issued by the Department under this Article may—

- (a) relate to how regard is to be had to the considerations mentioned in sub-paragraphs (a) to (e) of paragraph (3);
- (b) relate to any other matter which it considers may be a relevant consideration in any case and to how regard is to be had to any such matter;
- (c) set out considerations, other than those mentioned in sub-paragraphs (a) to (e) of paragraph (3), to which (so far as relevant) regard shall be had in determining whether it is appropriate for any sewer to be provided by virtue of this Article;
- (d) relate to how regard is to be had to any such consideration as is mentioned in sub-paragraph (c); and
- (e) without prejudice to sub-paragraphs (a) to (d), relate to how a sewerage undertaker is to discharge its functions under this Article.

(5) Before issuing guidance under this Article the Department shall consult—

- (a) DOE;
- (b) the Authority;
- (c) sewerage undertakers; and
- (d) such other bodies or persons as it considers appropriate;

and the Department shall arrange for any guidance issued by it under this Article to be published in such manner as it considers appropriate.

(6) Subject to the following provisions of this Article, the duty of a sewerage undertaker by virtue of paragraph (1) shall be enforceable under Article 30—

- (a) by the Department; or

- (b) with the consent of or in accordance with a general authorisation given by the Department, by the Authority.
- (7) Any dispute between a sewerage undertaker and an owner or occupier of any premises in its area as to—
  - (a) whether the undertaker is under a duty by virtue of paragraph (1) to provide a public sewer to be used for any such drainage of those premises as is mentioned in that paragraph;
  - (b) the domestic sewerage purposes for which any such sewer should be provided; or
  - (c) the time by which any such duty of the undertaker should be performed,
 shall be determined by the Authority, and may be referred to the Authority for determination by either of the parties to the dispute.
- (8) The Authority—
  - (a) shall notify the parties of the reasons for its decision on any dispute referred to it under paragraph (7); and
  - (b) may make any such recommendation, or give any such guidance, relating to or in connection with the drainage of the premises or locality in question as it considers appropriate.
- (9) The decision of the Authority on any dispute referred to it under paragraph (7) shall be final.
- (10) A sewerage undertaker shall only be taken to be in breach of its duty under paragraph (1) where, and to the extent that, it has accepted, or the Authority has determined under this Article, that it is under such a duty and where any time accepted by it, or determined by the Authority under this Article, as the time by which the duty is to that extent to be performed has passed.

#### **Power to construct lateral drains following provision of public sewer**

- 158.**—(1) Where a sewerage undertaker provides a public sewer pursuant to a duty to do so imposed on it by Article 154 or Article 157, the undertaker may, at the request of the person mentioned in paragraph (2), also provide at the same time one or more lateral drains to be used for the drainage for domestic sewerage purposes of premises in its area and to communicate with that sewer.
- (2) A request under paragraph (1) may be made—
    - (a) in the case of a public sewer to be provided under Article 154, by the person who requires the provision of the sewer under that Article; and
    - (b) in the case of a public sewer to be provided under Article 157, by the owner or occupier of any premises in respect of which the duty to provide the sewer arises under that Article (but any request may only be for the provision of a lateral drain to his premises).
  - (3) The person making a request under this Article shall pay to the sewerage undertaker, following provision of the lateral drain, the costs reasonably incurred in or in connection with providing that drain.
  - (4) Any dispute between the sewerage undertaker and the person making a request under this Article as to—
    - (a) whether a lateral drain should be provided pursuant to the request; or
    - (b) the costs reasonably incurred in the provision of a lateral drain,
 may be referred to the Authority for determination under Article 61 by either party to the dispute.
  - (5) Any lateral drain provided pursuant to a request made to a sewerage undertaker under this Article shall belong to the undertaker.

*Adoption of sewers and waste water treatment works*

**Adoption of sewers and waste water treatment works**

**159.**—(1) Subject to the following provisions of this Article and to Articles 160, 162 and 206(3), a sewerage undertaker may at any time declare that—

- (a) any sewer which is situated within its area or which serves the whole or any part of that area; or
- (b) any lateral drain which communicates or is to communicate with a public sewer which—
  - (i) is so situated or serves the whole or any part of that area; and
  - (ii) is vested in that undertaker; or
- (c) any waste water treatment works which are so situated or which serve the whole or any part of that area,

shall, as from such date as may be specified in the declaration, become vested in the undertaker.

(2) The owner, or any of the owners, of any sewer, lateral drain or waste water treatment works with respect to which a sewerage undertaker might make a declaration under this Article may make an application to that undertaker requesting it to make a declaration under this Article with respect to the sewer, lateral drain or works.

(3) A declaration or application under this Article may be made with respect to a part only of a sewer.

- (4) A sewerage undertaker which proposes to make a declaration under this Article—
  - (a) shall give notice of its proposal to the owner or owners of the sewer, lateral drain or works in question; and
  - (b) shall take no further action in the matter until two months have elapsed without an appeal against the proposal being lodged under Article 162 or, as the case may be, until any appeal so lodged has been determined.

(5) A sewerage undertaker, in deciding whether a declaration should be made under this Article, shall have regard to all the circumstances of the case and, in particular, to the following considerations, that is to say—

- (a) whether the sewer or works in question is or are adapted to, or required for, any general system of sewerage or sewage disposal which the undertaker has provided, or proposes to provide, for the whole or any part of its area;
- (b) whether the sewer or lateral drain is constructed under a road or under land reserved by a planning scheme for a street;
- (c) the number of buildings which the sewer or lateral drain is intended to serve, and whether, regard being had to the proximity of other buildings or the prospect of future development, it is likely to be required to serve additional buildings;
- (d) the method of construction and state of repair of the sewer, lateral drain or works; and
- (e) in a case where an owner objects, whether the making of the proposed declaration would be seriously detrimental to him.

(6) Any person who immediately before the making of a declaration under this Article was entitled to use the sewer or lateral drain in question shall be entitled to use it, or any sewer or lateral drain substituted for it, to the same extent as if the declaration had not been made.

(7) No declaration may be made under this Article in respect of—

- (a) any sewer or works the construction of which was completed before 1st October 1973;
- (b) any lateral drain the construction of which was completed before the transfer date.

### **Adoption under Article 159: supplementary**

**160.**—(1) Where a sewerage undertaker is about to take into consideration the question of making a declaration under Article 159 with respect to—

- (a) any sewer which is situated within the area of another sewerage undertaker or which, though situated within its own area, serves the whole or any part of the area of another sewerage undertaker;
- (b) any lateral drain which is situated within the area of another sewerage undertaker or which, though situated within its own area, communicates or is to communicate with a public sewer which is situated within or serves the whole or any part of the area of another sewerage undertaker; or
- (c) any waste water treatment works which are situated within the area of another sewerage undertaker or which, though situated within its own area, serve the whole or any part of the area of another sewerage undertaker,

it shall give notice to the other undertaker.

(2) Where a sewerage undertaker is required to give notice under paragraph (1) to another undertaker, no declaration under Article 159 shall be made by the former undertaker until either—

- (a) the other undertaker has consented to the declaration; or
- (b) the Department, on an application made to it, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as it may consider fit to impose.

(3) Where—

- (a) a sewer (or part of a sewer) or a lateral drain is vested, or any waste water treatment works are vested, in a relevant body; and
- (b) in the case of a sewer, part of a sewer, lateral drain or works vested in a railway undertaking or harbour authority, the sewer, part or lateral drain in question is, or the works are, situated in or on land belonging to that operator or authority and held or used by that operator or authority for the purposes of its undertaking,

a sewerage undertaker shall not make a declaration under Article 159 with respect to (as the case may be) the sewer, or part of it, or the lateral drain or the works, except on the application of the relevant body concerned.

(4) Where a sewerage undertaker makes a declaration under Article 159 with respect to—

- (a) a sewer or lateral drain which is situated within the area of another sewerage undertaker; or
- (b) any waste water treatment works which are so situated,

it shall forthwith give notice of the fact to that other undertaker.

(5) In this Article “relevant body” means any sewerage undertaker, district council, railway undertaking or harbour authority.

### **Agreements to adopt sewer, drain or waste water treatment works at future date**

**161.**—(1) Subject to paragraph (7) and Article 206(3), a sewerage undertaker may agree with—

- (a) any person constructing or proposing to construct—
  - (i) any sewer;
  - (ii) any drain which is intended to communicate with a public sewer vested in that undertaker; or
  - (iii) any waste water treatment works; or

(b) any person at whose expense the undertaker is, by virtue of an agreement under Article 221, to carry out work in connection with the construction of such a drain or sewer, that, if the sewer, drain or waste water treatment works is or are constructed in accordance with the terms of the agreement, the undertaker will, upon completion of the work, at some specified date or on the happening of some future event, declare the sewer or such part of the drain as constitutes the lateral drain or the works (as the case may be) to be vested in that undertaker.

(2) A person mentioned in sub-paragraph (a) or (b) of paragraph (1) may make an application to a sewerage undertaker requesting the undertaker to make an agreement under this Article.

(3) An application under paragraph (2) shall be accompanied and supplemented by all such information as the undertaker may reasonably require; but, subject to paragraph (4) and without prejudice to the effect (if any) of any other contravention of the requirements of this Article in relation to such an application, a failure to provide information in pursuance of the obligation to supplement such an application shall not invalidate the application.

(4) Where—

- (a) a person who has made an application to a sewerage undertaker under paragraph (2) has failed to comply with his obligation under this Article to supplement that application with information required by the undertaker; and
- (b) that requirement was made by the undertaker at such a time before the end of the period within which the undertaker is required, by virtue of Article 162, to respond to the application as gave that person a reasonable opportunity to provide the required information within that period,

the undertaker may delay its response to the application until a reasonable time after the required information is provided.

(5) Any agreement made under this Article by a sewerage undertaker shall be enforceable against the undertaker by the owner or occupier for the time being of any premises served by the sewer, lateral drain or works to which it relates.

(6) Without limiting the terms which may be included in an agreement under this Article

- (a) such terms may include terms as to the provision of such security as the undertaker may reasonably require for the discharge of any obligations imposed on the other party to the agreement; and
- (b) such terms relating to a drain may include in particular —
  - (i) identification of that part of the drain which constitutes the lateral drain for the purposes of the agreement and, in particular, the point or points of connection between that part and the remainder of the drain;
  - (ii) a requirement for the installation of an inspection chamber, at the expense of the person with whom the sewerage undertaker is to make the agreement, at a place specified in the agreement;
  - (iii) provision, if the inspection chamber is constructed in accordance with the terms of the agreement, for the undertaker to declare that the inspection chamber be vested in the undertaker at the same time as the lateral drain; and
  - (iv) provision for the lateral drain, once vested in the undertaker, to communicate with a public sewer at the place or places specified in the agreement.

(7) A sewerage undertaker shall not make an agreement under this Article with respect to—

- (a) a sewer, drain or waste water treatment works situated within the area of another sewerage undertaker; or
- (b) a drain which is intended to communicate with a sewer which—

- (i) is so situated; or
  - (ii) is vested in another sewerage undertaker,
- until one of the conditions mentioned in paragraph (8) is satisfied.

(8) The conditions are—

- (a) that the other undertaker has consented to the making of the agreement; or
- (b) that the Department, on an application made to it, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as it may consider fit to impose.

### **Appeals with respect to adoption**

**162.**—(1) An owner of any sewer, lateral drain or waste water treatment works may appeal to the Authority if—

- (a) he is aggrieved by the proposal of a sewerage undertaker to make a declaration under Article 159; or
- (b) he is aggrieved by the refusal of a sewerage undertaker to make such a declaration.

(2) Subject to Article 161(4), a person constructing or proposing to construct a drain or sewer or any waste water treatment works may appeal to the Authority where a sewerage undertaker—

- (a) has refused an application under Article 161;
- (b) has offered to grant such an application on terms to which that person objects; or
- (c) has failed, before the end of two months from the making of such an application, either to refuse the application or to give notice to the applicant of the terms on which it is prepared to grant the application.

(3) The time for the making of an appeal under paragraph (1) by the owner of any sewer, lateral drain or waste water treatment works shall be—

- (a) in the case of an appeal by virtue of sub-paragraph (a) of that paragraph, any time within two months after notice of the proposal is served on that owner; and
- (b) in the case of an appeal by virtue of sub-paragraph (b) of that paragraph, any time after receipt of notice of the undertaker's refusal or, if no such notice is given, at any time after the end of two months from the making of the application for the declaration.

(4) On the hearing of an appeal under this Article, the Authority may—

- (a) in the case of an appeal under paragraph (1), allow or disallow the proposal of the sewerage undertaker or, as the case may be, make any declaration which the sewerage undertaker might have made; or

(b) in the case of an appeal under paragraph (2)—

- (i) uphold the refusal of the undertaker to grant the application or to modify the terms offered; or
- (ii) on behalf of the undertaker, refuse the application or enter into any agreement into which the undertaker might have entered on the application;

and any declaration made under sub-paragraph (a) shall have the same effect as if it had been made by the undertaker in question.

(5) Where the Authority makes a declaration under paragraph (4)(a), it may, if it thinks fit—

- (a) specify conditions, including conditions as to the payment of compensation by the sewerage undertaker; and

(b) direct that its declaration shall not take effect unless any conditions so specified are accepted.

(6) Where the Authority makes an agreement under paragraph (4)(b) on behalf of a sewerage undertaker, it may do so on such terms as it considers reasonable or, as the case may be, on the terms offered by the undertaker subject to such modifications as the Authority considers appropriate for ensuring that the terms of the agreement are reasonable.

(7) The Authority, in deciding on an appeal under this Article whether any declaration or agreement should be made, shall have regard to all the circumstances of the case and, in particular, to the considerations specified in Article 159(5); and for the purposes of this paragraph, in its application in relation to an appeal under paragraph (2), sub-paragraphs (a) to (e) of Article 159(5) shall have effect with the necessary modifications.

#### *Communication of drains and private sewers with public sewers*

### **Right to communicate with public sewers**

**163.**—(1) Subject to the provisions of this Article—

- (a) the owner or occupier of any premises, or
- (b) the owner of any private sewer which drains premises,

shall be entitled to have his drains or sewer communicate with the public sewer of any sewerage undertaker and thereby to discharge foul water and surface water from those premises or that private sewer.

(2) In this Article, and in Articles 164 to 166, 168, 170 to 173, 175, 176, 182, 185, 198 and 206—

- (a) references (however expressed) to a public sewer include a public lateral drain which satisfies sewer standards; and
- (b) for the purposes of sub-paragraph (a)—
  - (i) a “public lateral drain” is a lateral drain which either belongs to the sewerage undertaker or is vested in the sewerage undertaker by virtue of a declaration made under Article 159 or under an agreement made under Article 161; and
  - (ii) “sewer standards” means such standards of construction and repair as the undertaker would require if the public lateral drain or part of it were to become a public sewer.

(3) Subject to the provisions of Chapter III of this Part, nothing in paragraph (1) shall entitle any person—

- (a) to discharge directly or indirectly into any public sewer—
  - (i) any liquid from a factory, other than domestic sewage or surface or storm water, or any liquid from a manufacturing process; or
  - (ii) any liquid or other matter the discharge of which into public sewers is prohibited by or under any statutory provision; or
- (b) where separate public sewers are provided for foul water and for surface water, to discharge directly or indirectly—
  - (i) foul water into a sewer provided for surface water; or
  - (ii) except with the approval of the undertaker, surface water into a sewer provided for foul water; or
- (c) to have his drains or sewer made to communicate directly with a storm-water overflow sewer.

(4) A person whose private sewer or drains do not communicate with a public sewer and who is desirous of availing himself of his entitlement under this Article shall give notice of his proposals to the sewerage undertaker in question.

(5) At any time within 21 days after a sewerage undertaker receives a notice under paragraph (4), the undertaker may by notice to the person who gave the notice refuse to permit the communication to be made, if it appears to the undertaker that the mode of construction or condition of the drain or sewer—

- (a) does not satisfy the standards reasonably required by the undertaker; or
- (b) is such that the making of the communication would be prejudicial to the undertaker's sewerage system.

(6) For the purpose of examining the mode of construction and condition of a drain or sewer to which a notice under paragraph (4) relates a sewerage undertaker may, if necessary, require it to be laid open for inspection.

(7) Where the sewer or drain satisfies the standards reasonably required by it, a sewerage undertaker may, as a condition of permitting the communication to be made, require that the sewer or that part of the drain forming the lateral drain be vested in it by virtue of a declaration under Article 159.

(8) Any question arising under paragraphs (4) to (7) between a sewerage undertaker and a person proposing to make a communication as to—

- (a) the reasonableness of the undertaker's refusal to permit a communication to be made; or
- (b) as to the reasonableness of any requirement under paragraph (6) or (7),

may, on the application of that person, be determined by the Authority under Article 61 and, accordingly, Article 162 shall not apply to any requirement under paragraph (7).

(9) In this Article “factory” has the same meaning as in the Factories Act (Northern Ireland) 1965 (c. 20).

### **Right of sewerage undertaker to undertake the making of communications with public sewers**

**164.**—(1) Where a person gives to a sewerage undertaker notice under Article 163 of his proposal to have his drains or sewer made to communicate with a public sewer of that undertaker, the undertaker may—

- (a) within 21 days after the receipt of the notice; or
- (b) if any question arising under the notice requires to be determined by the Authority, within 21 days after the determination of that question,

give notice to that person that the undertaker intends itself to make the communication.

(2) If, after a notice has been given to any person under paragraph (1), that person proceeds himself to make the communication, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(3) Where a sewerage undertaker has given a notice under paragraph (1)—

- (a) the undertaker shall have all such rights in respect of the making of the communication as the person desiring it to be made would have; but
- (b) it shall not be obligatory on the undertaker to make the communication until either—
  - (i) there has been paid to the sewerage undertaker any such sum, not exceeding the undertaker's reasonable estimate of the cost of the work, as the undertaker may have required to be paid to it; or



- (ii) there has been given to the undertaker such security for the payment of the cost of the work as it may reasonably have required.

(4) If any payment made to a sewerage undertaker under paragraph (3) exceeds the expenses reasonably incurred by it in the carrying out of the work in question, the excess shall be repaid by the undertaker; and, if and so far as those expenses are not covered by such a payment, the undertaker may recover summarily as a civil debt the expenses, or the balance of them, from the person for whom the work was done.

(5) Any dispute between a sewerage undertaker and any other person as to—

- (a) whether the undertaker's estimate of the cost of works given under paragraph (3)(b)(i) is reasonable,
- (b) whether any requirement of security for the payment of the cost of works was reasonably made by the undertaker, or
- (c) whether any excess is repayable, or any expenses are recoverable, by the undertaker under paragraph (4), or the amount of any such excess or expenses,

may be referred to the Authority for determination under Article 61 by either party to the dispute.

(6) For the purposes of this Article, the making of the communication between a drain or private sewer and a public sewer includes all such work as involves the breaking open of a street.

### **Communication works by person entitled to communication**

**165.**—(1) Where a sewerage undertaker does not under Article 164 elect itself to make a communication to which a person is entitled under Article 163, the person making it shall—

- (a) before commencing the work, give reasonable notice to any person directed by the undertaker to superintend the carrying out of the work; and
- (b) afford any such person all reasonable facilities for superintending the carrying out of the work.

(2) For the purpose—

- (a) of exercising his rights under Article 163; or
- (b) of examining, repairing or renewing any drain or private sewer draining his premises into a public sewer,

the owner or occupier of any premises shall be entitled to exercise the same powers as, for the purpose of carrying out its functions, are conferred on a sewerage undertaker by Articles 219 and 222(1).

(3) The provisions of Part VIII of this Order shall apply, with the necessary modifications, in relation to the power conferred by paragraph (2) as they apply in relation to the power conferred by Articles 219 and 222(1).

### **Unlawful communications**

**166.**—(1) Any person who causes a drain or sewer to communicate with a public sewer—

- (a) in contravention of any of the provisions of Article 163 or 165; or
- (b) before the end of the period mentioned in paragraph (5) of Article 163,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(2) Whether proceedings have or have not been taken by a sewerage undertaker in respect of an offence under this Article, such an undertaker may—

- (a) close any communication made in contravention of any of the provisions of Article 163 or 165; and
- (b) recover summarily as a civil debt from the offender any expenses reasonably incurred by the undertaker in so doing.

### *Connections between public sewers*

#### **New connections with public sewers**

**167.**—(1) Where, on the application of any qualifying person—

- (a) it appears to the Authority that it is necessary or expedient for the purposes of this Part that the sewerage undertaker specified in the application (“the established undertaker”) should permit a main connection into its sewerage system and
- (b) the Authority is satisfied that the making of such a connection cannot be secured by agreement,

the Authority may by order require the established undertaker to allow the connection for such period and on such terms and conditions as may be provided in the order.

(2) In this Article “qualifying person” means—

- (a) a sewerage undertaker; or
- (b) a person who has made an application for an appointment or variation under Article 15 which has not been determined.

(3) In paragraph (1) a “main connection” means a connection—

- (a) between a sewer or disposal main and a sewer or disposal main; or
- (b) a connection which allows a sewer or disposal main to discharge directly into a waste water treatment works.

(4) Where the application is made by a person who is not a sewerage undertaker at the time when the application is made, an order made under this Article in response to that application shall be expressed not to come into force until the applicant becomes a sewerage undertaker for the area specified in the order, or for an area which includes that area.

(5) Subject to paragraph (4), an order under this Article shall have effect as an agreement between the established undertaker and the applicant but may be varied or revoked by a subsequent order made by the Authority on the application of either party to the agreement, as well as by agreement between the parties.

(6) The Authority shall not make an order under this Article unless it has first consulted the Department.

(7) In exercising its functions under this Article, the Authority shall have regard to the desirability of—

- (a) facilitating effective competition within the sewerage services industry;
- (b) the existing undertaker’s recovering the expenses of complying with its obligations by virtue of this Article and securing a reasonable return on its capital;
- (c) the existing undertaker’s being able to meet its existing obligations, and likely future obligations, to provide sewerage services without having to incur unreasonable expenditure in carrying out works;
- (d) not putting at risk the ability of the existing undertaker to meet its existing obligations, or likely future obligations, to provide such services.

*Provisions protecting public sewers*

**Restrictions on use of public sewers**

**168.**—(1) Subject to the provisions of Chapter III of this Part, no person shall throw, empty or turn, or suffer or permit to be thrown or emptied or to pass, into any public sewer, or into any drain or sewer communicating with a public sewer or into any waste water treatment works—

- (a) any matter likely to—
  - (i) injure the sewer, drain or works,
  - (ii) interfere with the free flow of its contents or
  - (iii) affect prejudicially the treatment and disposal of its contents,either alone or in combination with the contents of the sewer, drain or works; or
- (b) any such chemical refuse or waste steam, or any such liquid of a temperature higher than 43 degrees Celsius, as is by virtue of paragraph (2) a prohibited substance; or
- (c) any petroleum spirit or carbide of calcium.

(2) For the purposes of paragraph (1), chemical refuse, waste steam or a liquid of a temperature higher than that mentioned in that paragraph is a prohibited substance if (either alone or in combination with the contents of the sewer, drain or works in question) it is or, in the case of the liquid, is when so heated—

- (a) dangerous;
- (b) the cause of a nuisance; or
- (c) injurious, or likely to cause injury, to health.

(3) A person who contravenes any of the provisions of this Article shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum and to a further fine not exceeding £50 for each day on which the offence continues after conviction;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(4) For the purposes of so much of paragraph (3) as makes provision for the imposition of a daily penalty—

- (a) the court by which a person is convicted of the original offence may fix a reasonable date from the date of conviction for compliance by the defendant with any directions given by the court; and
- (b) where a court has fixed such a period, the daily penalty shall not be imposed in respect of any day before the end of that period.

(5) In this Article the expression “petroleum spirit” means any such—

- (a) crude petroleum;
- (b) oil made from petroleum or from coal, shale, peat or other bituminous substances; or
- (c) product of petroleum or mixture containing petroleum,

as, when tested in the manner prescribed by or under the Petroleum (Consolidation) Act (Northern Ireland) 1929 (c. 13), gives off an inflammable vapour at a temperature of less than 23 degrees Celsius.

### **Requirement that proposed drain or sewer be constructed so as to form part of general system**

**169.**—(1) Where—

- (a) a person proposes to construct a drain or sewer; and
- (b) a sewerage undertaker considers that the proposed drain or sewer is, or is likely to be, needed to form part of a general sewerage system which that undertaker provides or proposes to provide,

the undertaker may require that person to construct the drain or sewer in a manner differing, as regards material or size of pipes, depth, fall, direction or outfall or otherwise, from the manner in which that person proposes, or could otherwise be required by the undertaker, to construct it.

(2) If any person on whom requirements are imposed under this Article by a sewerage undertaker is aggrieved by the requirements, he may within 28 days appeal to the Authority.

(3) On an appeal under paragraph (2) with respect to any requirements, the Authority may either disallow the requirements or allow them with or without modification.

(4) It shall be the duty of a person on whom requirements are imposed by a sewerage undertaker under this Article to comply with those requirements.

(5) The duty of any person by virtue of paragraph (4) to comply with the requirements of a sewerage undertaker shall be owed to the undertaker; and any breach of that duty which causes the undertaker to sustain loss or damage shall be actionable at the suit of the undertaker.

(6) A sewerage undertaker which exercises the powers conferred on it by this Article shall—

- (a) repay to the person constructing the drain or sewer the extra expenses reasonably incurred by that person in complying with the undertaker's requirements; and
- (b) until the drain or sewer becomes a public sewer, from time to time repay to that person so much of any expenses reasonably incurred by him in repairing or maintaining the drain or sewer as may be attributable to the undertaker's requirements having been imposed and complied with.

(7) Nothing in this Article shall apply in relation to so much of any drain or sewer as is proposed to be constructed by any railway undertaking or harbour authority in or on land which—

- (a) belongs to that undertaking or authority; and
- (b) is held or used by it for the purposes of its undertaking.

### **Power to alter drainage system of premises in area**

**170.**—(1) Where any premises have a drain or sewer communicating with a public sewer or a cesspool, but that system of drainage, though sufficient for the effectual drainage of the premises—

- (a) is not adapted to the general sewerage system of the area; or
- (b) is, in the opinion of the sewerage undertaker for the area, otherwise objectionable,

the undertaker may, at its own expense, close the existing drain or sewer and fill up the cesspool, if any, and do any work necessary for that purpose.

(2) The power conferred on a sewerage undertaker by paragraph (1) shall be exercisable on condition only that the undertaker first provides, in a position equally convenient to the owner of the premises in question, a drain or sewer which—

- (a) is equally effectual for the drainage of the premises; and
- (b) communicates with a public sewer.

(3) A sewerage undertaker which proposes to carry out any work under this Article shall give notice of its proposals to the owner of the premises in question.

(4) If the owner of the premises is aggrieved by the proposals, whether as regards the position or the sufficiency of the drain or sewer proposed to be provided for the drainage of the premises, he may refer the matter to the Authority for determination under Article 61.

(5) The Department may by regulations make provision with respect to consents and the conditions of consents for discharges of trade effluent into the sewer of a sewerage undertaker through a drain or sewer provided in pursuance of this Article.

(6) In this Article—

“cesspool” includes a settlement tank, septic tank or other tank for the reception or disposal of foul matter from buildings; and

“trade effluent” has the same meaning as in Chapter III.

### **Power to investigate defective drain or sewer**

**171.**—(1) Where it appears to a sewerage undertaker that there are reasonable grounds for believing—

- (a) that any drain connecting with a public sewer, or any private sewer so connecting, is in such a condition as to be injurious or likely to cause injury to health or as to be a nuisance; or
- (b) that any such drain or private sewer is so defective as to admit subsoil water,

the undertaker may examine the condition of the drain or sewer and, for that purpose, may apply any test, other than a test by water under pressure and, if the undertaker deems it necessary, open the ground.

(2) If on examination the drain or sewer is found to be in proper condition, the undertaker shall, as soon as possible, reinstate any ground which has been opened by it and make good any damage done by the undertaker.

### *Use of pipes for sewerage purposes*

### **Use of road drains as sewers and vice versa**

**172.**—(1) Subject to the provisions of this Article, the Department and a sewerage undertaker may agree that—

- (a) any drain or sewer which is vested in the Department for the purposes of its functions under the [Roads \(Northern Ireland\) Order 1993 \(NI 15\)](#) may, upon such terms as may be agreed, be used by the undertaker for the purpose of conveying surface water from premises or roads;
- (b) any public sewer vested in the undertaker may, upon such terms as may be agreed, be used by the Department for conveying surface water from roads.

(2) Where a sewer or drain with respect to which the Department and a sewerage undertaker propose to make an agreement under this Article discharges, whether directly or indirectly, into the sewers or waste water treatment works of another sewerage undertaker, the agreement shall not be made without the consent of that other undertaker.

(3) Subject to paragraph (4), a consent given by a sewerage undertaker for the purposes of paragraph (2) may be given on such terms as that undertaker thinks fit.

(4) Neither the Department nor a sewerage undertaker shall—

- (a) unreasonably refuse to enter into an agreement for the purposes of this Article; or
- (b) insist unreasonably upon terms unacceptable to the other party;

and a sewerage undertaker shall not unreasonably refuse to consent to the making of such an agreement or insist unreasonably upon terms unacceptable to either party.

(5) Any question arising under this Article as to whether or not the Department or any sewerage undertaker is acting unreasonably may be referred by either party to the Appeals Commission.

(6) Nothing in this Article affects the powers of the Department under Article 45 of the [Roads \(Northern Ireland\) Order 1993 \(NI 15\)](#) (road drains).

### **Power to close or restrict use of public sewer**

**173.**—(1) Subject to paragraph (3), a sewerage undertaker may discontinue and prohibit the use of any public sewer which is vested in the undertaker.

(2) A discontinuance or prohibition under this Article may be for all purposes, for the purpose of foul water drainage or for the purpose of surface water drainage.

(3) Before any person who is lawfully using a sewer for any purpose is deprived under this Article by a sewerage undertaker of the use of the sewer for that purpose, the undertaker shall—

- (a) provide a sewer which is equally effective for his use for that purpose; and
- (b) at the undertaker's own expense, carry out any work necessary to make that person's drains or sewers communicate with the sewer provided in pursuance of this paragraph.

(4) Any dispute arising under paragraph (3)(a) between a sewerage undertaker and any other person as to the effectiveness of any sewer provided by the undertaker for that person's use may be referred to the Authority for determination under Article 61 by either party to the dispute.

## *Interpretation of Chapter II*

### **Interpretation of Chapter II**

**174.**—(1) In this Chapter “domestic sewerage purposes”, in relation to any premises, means any one or more of the following purposes, that is to say—

- (a) the removal, from buildings on the premises and from land occupied with and appurtenant to the buildings, of the contents of lavatories;
- (b) the removal, from such buildings and from such land, of water which has been used for cooking or washing; and
- (c) the removal, from such buildings and such land, of surface water;

but does not, by virtue of sub-paragraph (b), include the removal of any water used for the business of a laundry or for a business of preparing food or drink for consumption otherwise than on the premises.

(2) References in this Chapter to the construction of a sewer or of any waste water treatment works include references to the extension of any existing sewer or works.

(3) Every application made or consent given under this Chapter shall be made or given in writing.

(4) Nothing in Articles 159 to 166 or in Articles 168 to 173 shall be construed as authorising a sewerage undertaker to construct or use any public or other sewer, or any drain or outfall—

- (a) in contravention of any applicable provision of the Water Order; or
- (b) for the purpose of conveying foul water into any natural or artificial watercourse, pond or lake, without the water having been so treated as not to affect prejudicially the purity and quality of the water in that watercourse, pond or lake.

(5) A sewerage undertaker shall so carry out its functions under Articles 159 to 162, 169, 172 and 173 as not to create a nuisance.

## CHAPTER III

### TRADE EFFLUENT

#### *Consent for discharge of trade effluent into public sewer*

#### **Consent required for discharge of trade effluent into public sewer**

**175.**—(1) Subject to the following provisions of this Chapter, the occupier of any trade premises in the area of a sewerage undertaker may discharge any trade effluent proceeding from those premises into the undertaker's public sewers if he does so with the undertaker's consent.

(2) Nothing in this Chapter shall authorise the discharge of any effluent into a public sewer otherwise than by means of a drain or sewer.

(3) The following, that is to say

- (a) the restrictions imposed by sub-paragraphs (a) and (b) of Article 163(3); and
- (b) Article 168 so far as it relates to anything falling within sub-paragraph (a) or (b) of paragraph (1) of that Article,

shall not apply to any discharge of trade effluent which is lawfully made by virtue of this Chapter.

(4) Accordingly, paragraphs (4) to (9) of Article 163 and Articles 165 and 166 shall have effect in relation to communication with a sewer for the purpose of making any discharge which is lawfully made by virtue of this Chapter as they have effect in relation to communication with a sewer for the purpose of making discharges which are authorised by paragraph (1) of Article 163.

(5) If, in the case of any trade premises, any trade effluent is discharged without such consent or other authorisation as is necessary for the purposes of this Chapter, the occupier of the premises shall be guilty of an offence and liable

- (a) on summary conviction, to a fine not exceeding the statutory maximum and to a further fine not exceeding £50 for each day on which the offence continues after conviction; and
- (b) on conviction on indictment, to a fine.

#### *Consents on an application*

#### **Application for consent**

**176.**—(1) An application to a sewerage undertaker for a consent to discharge trade effluent from any trade premises into a public sewer of that undertaker shall be by notice served on the undertaker by the occupier of the premises.

(2) An application under this Article with respect to a proposed discharge of any such effluent shall state

- (a) the nature, temperature and composition of the trade effluent;
- (b) the steps proposed to be taken, in relation to the discharge or by way of subjecting any substance likely to affect the description of matter discharged to treatment or any other process, for minimising
  - (i) the polluting effects of the discharge on any controlled waters; and
  - (ii) the impact of the discharge on sewerage services;
- (c) the maximum quantity of the trade effluent which it is proposed to discharge on any one day; and
- (d) the highest rate at which it is proposed to discharge the trade effluent.

- (3) In this Article “controlled waters” means
- (a) a waterway (within the meaning of the Water Order); or
  - (b) water in any underground strata.

### **Transfer of consent**

**177.**—(1) A consent given under this Chapter may be transferred by the holder to a person who proposes to carry on the discharges in place of the holder.

(2) On the death of the holder of a consent given under this Chapter, the consent shall be regarded as property forming part of the deceased’s personal estate, whether or not it would be so regarded apart from this paragraph, and shall accordingly vest in his personal representatives.

(3) If a bankruptcy order is made against the holder of a consent given under this Chapter, the consent shall, subject to paragraph (4), be regarded for the purposes of any of Parts IX and X of the Insolvency (Northern Ireland) Order 1989 (insolvency of individuals: bankruptcy) as property forming part of the bankrupt’s estate, whether or not it would be so regarded apart from this paragraph, and shall accordingly vest as such in the trustee in bankruptcy.

(4) A consent given under this Chapter which is transferred to, or which vests in, a person under this Article shall have effect on and after the date of the transfer or vesting as if it had been granted to that person under this Chapter, subject to the same conditions as were attached to it immediately before that date.

- (5) Where a consent given under this Chapter is to be transferred under paragraph (1)—
- (a) the person from whom and the person to whom the consent is to be transferred shall give joint notice to the sewerage undertaker of the proposed transfer;
  - (b) the notice may specify the date on which it is proposed that the transfer should take effect;
  - (c) within 21 days beginning with the date of receipt of the notice duly given in accordance with paragraph (6), the sewerage undertaker shall—
    - (i) arrange to amend the consent by substituting the name of the transferee as holder of the consent; and
    - (ii) serve notice on the transferor and the transferee that the amendment has been made; and
  - (d) the transfer shall take effect from the later of—
    - (i) the date on which the sewerage undertaker amends the consent; and
    - (ii) the date (if any) specified in the joint notice under sub-paragraph (a).

(6) A joint notice under paragraph (5)(a) shall include such information as may be prescribed.

(7) If the person from whom the consent is to be transferred is a person in whom the consent has vested by virtue of paragraph (2) or (3), a joint notice given under paragraph (5)(a) shall be of no effect unless the notice required by paragraph (8) has been given.

(8) Where a consent given under this Chapter vests in any person as mentioned in paragraph (2) or (3), that person shall give notice of that fact to the sewerage undertaker not later than the end of the period of 15 months beginning with the date of the vesting.

- (9) If—
- (a) a consent given under this Chapter vests in any person as mentioned in paragraph (2) or (3), but
  - (b) that person fails to give the notice required by paragraph (8) within the period there mentioned,

the consent, to the extent that it permits the making of any discharges, shall cease to have effect.



(10) A person who fails to give a notice which he is required by paragraph (5) or (8) to give shall be guilty of an offence and liable—

- (a) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years, or to both;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(11) It shall be the duty of a sewerage undertaker to notify DOE of the happening of any of the following events—

- (a) the receipt by the undertaker of a joint notice under paragraph (5) in relation to a consent which authorises the discharge of special category effluent;
- (b) the assignment by the undertaker of any rights under an agreement under this Chapter which authorises the discharge of special category effluent;
- (c) the undertaker receiving notice of, or otherwise becoming aware of, the assignment by the other party to such an agreement of any rights under that agreement.

(12) The duty of a sewerage undertaker under paragraph (11) is enforceable under Article 30 by the Authority.

### **Applications for the discharge of special category effluent**

**178.**—(1) Subject to paragraph (3), where a notice containing an application under Article 176 is served on a sewerage undertaker with respect to discharges of any special category effluent, it shall be the duty of the undertaker to refer to DOE the questions

- (a) whether the discharges to which the notice relates should be prohibited; and
- (b) whether, if they are not prohibited, any requirements should be imposed as to the conditions on which they are made.

(2) Subject to paragraph (3), a reference which is required to be made by a sewerage undertaker by virtue of paragraph (1) shall be made before the end of the period of two months beginning with the day after the notice containing the application is served on the undertaker.

(3) There shall be no obligation on a sewerage undertaker to make a reference under this Article in respect of any application if, before the end of the period mentioned in paragraph (2), there is a refusal by the undertaker to give any consent on the application.

(4) It shall be the duty of a sewerage undertaker where it has made a reference under this Article not to give any consent, or enter into any agreement, with respect to the discharges to which the reference relates at any time before DOE serves notice on the undertaker of its determination on the reference.

(5) Every reference under this Article shall be made in writing and shall be accompanied by a copy of the notice containing the application in respect of which it is made.

(6) It shall be the duty of a sewerage undertaker, on making a reference under this Article, to serve a copy of the reference on the occupier of the trade premises in question.

(7) If a sewerage undertaker fails, within the period provided by paragraph (2), to refer to DOE any question which he is required by paragraph (1) to refer to DOE, the undertaker shall be guilty of an offence and liable

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(8) If DOE becomes aware of any such failure as is mentioned in paragraph (7), it may

- (a) if a consent under this Chapter to make discharges of any special category effluent has been granted on the application in question, exercise its powers of review under Article 185 or 189, notwithstanding anything in paragraph (2) of the Article in question; or

- (b) in any other case, proceed as if the reference required by this Article had been made.

### Conditions of consent

**179.**—(1) The power of a sewerage undertaker, on an application under Article 176, to give a consent with respect to the discharge of any trade effluent shall be a power to give a consent either unconditionally or subject to such conditions as the sewerage undertaker thinks fit to impose with respect to

- (a) the sewer or sewers into which the trade effluent may be discharged;
- (b) the nature, temperature or composition of the trade effluent which may be discharged;
- (c) the steps to be taken, in relation to the discharge or by way of subjecting any substance likely to affect the description of the matter discharged to treatment or any other process, for minimising
  - (i) the polluting effects of the discharge on any controlled waters; and
  - (ii) the impact of the discharge on sewerage services;
- (d) the maximum quantity of trade effluent which may be discharged on any one day, either generally or into a particular sewer; and
- (e) the highest rate at which trade effluent may be discharged, either generally or into a particular sewer.

(2) Conditions with respect to all or any of the following matters may also be attached under this Article to a consent to the discharge of trade effluent from any trade premises

- (a) the period or periods of the day during which the trade effluent may be discharged from the trade premises into the sewer;
- (b) the exclusion from the trade effluent of all condensing water;
- (c) the elimination or diminution of any specified constituent of the trade effluent before it enters the sewer;
- (d) the acidity or alkalinity of the trade effluent at the time when it is discharged into the sewer;
- (e) the payment by the occupier of the trade premises to the undertaker of charges for the reception of the trade effluent into the sewer and for the disposal of the effluent;
- (f) the provision and maintenance of such an inspection chamber or manhole as will enable a person readily to take samples, at any time, of what is passing into the sewer from the trade premises;
- (g) the provision, location, testing and maintenance of such meters as may be required to measure the volume and rate of discharge of any trade effluent being discharged from the trade premises into the sewer;
- (h) the provision, testing and maintenance of apparatus for determining the nature, temperature and composition of any trade effluent being discharged from the premises into the sewer;
- (i) the keeping of records of the volume, rate of discharge, nature, temperature and composition of any trade effluent being discharged and, in particular, the keeping of records of readings of meters and other recording apparatus provided in compliance with any other condition attached to the consent; and
- (j) the making of returns and giving of other information to the sewerage undertaker concerning the volume, rate of discharge, nature, temperature and composition of any trade effluent discharged from the trade premises into the sewer.

- (3) In the exercise of the power conferred by virtue of paragraph (2)(e), regard shall be had

- (a) to the nature, temperature and composition and to the volume and rate of discharge of the trade effluent discharged;
  - (b) to any additional expense incurred or likely to be incurred by a sewerage undertaker in connection with the reception or disposal of the trade effluent; and
  - (c) to any revenue likely to be derived by the undertaker from the trade effluent.
- (4) If, in the case of any trade premises, a condition imposed under this Article is contravened, the occupier of the premises shall be guilty of an offence and liable
- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment, to a fine.
- (5) In this Article “controlled waters” means
- (a) a waterway (within the meaning of the Water Order); or
  - (b) water in any underground strata.
- (6) This Article has effect subject to the provisions of Articles 191 and 193(3).

#### **Appeals to the Authority with respect to decisions on applications etc.**

**180.**—(1) Any person aggrieved by

- (a) the refusal of a sewerage undertaker to give a consent for which application has been duly made to the undertaker under Article 176;
- (b) the failure of a sewerage undertaker to give such a consent within the period of two months beginning with the day after service of the notice containing the application; or
- (c) any condition attached by a sewerage undertaker to such a consent,

may appeal to the Authority.

(2) On an appeal under this Article in respect of a refusal or failure to give a consent, the Authority may give the necessary consent, either unconditionally or subject to such conditions as it thinks fit to impose for determining any of the matters as respects which the undertaker has power to impose conditions under Article 179.

(3) On an appeal under this Article in respect of a condition attached to a consent, the Authority may take into review all the conditions attached to the consent, whether appealed against or not, and may

- (a) substitute for them any other set of conditions, whether more or less favourable to the appellant; or
- (b) annul any of the conditions.

(4) The Authority may, under paragraph (3), include provision as to the charges to be made in pursuance of any condition attached to a consent for any period before the determination of the appeal.

(5) On any appeal under this Article, the Authority may give a direction that the trade effluent in question shall not be discharged until a specified date.

(6) Any consent given or conditions imposed by the Authority under this Article in respect of discharges of trade effluent shall have effect for the purposes of this Chapter as if given or imposed by the sewerage undertaker in question.

(7) The powers of the Authority under this Article shall be subject to the provisions of Articles 181, 186, 191, 193 and 196.

### **Appeals with respect to the discharge of special category effluent**

**181.**—(1) Where a reference is made to DOE under Article 178, the period mentioned in sub-paragraph (b) of paragraph (1) of Article 180 shall not begin to run for the purposes of that paragraph, in relation to the application to which the reference relates, until the day after DOE serves notice on the sewerage undertaker in question of its determination on the reference.

(2) If, on an appeal under Article 180, it appears to the Authority

- (a) that the case is one in which the sewerage undertaker in question is required to make a reference under Article 178 before giving a consent; and
- (b) that the undertaker has not made such a reference, whether because the case falls within paragraph (3) of that Article or otherwise,

the Authority shall not be entitled to determine the appeal, otherwise than by upholding a refusal, except where the conditions set out in paragraph (3) are satisfied.

(3) The conditions mentioned in paragraph (2) are satisfied if the Authority

- (a) has itself referred the questions mentioned in Article 178(1) to DOE; and
- (b) has been sent a copy of the notice of DOE's determination on the reference.

(4) Every reference under this Article shall be made in writing and shall be accompanied by a copy of the notice containing the application in respect of which the appeal and reference is made.

(5) It shall be the duty of the Authority, on making a reference under this Article, to serve a copy of the reference

- (a) on the occupier of the trade premises in question; and
- (b) on the sewerage undertaker in question.

### **Variation of consents**

**182.**—(1) Subject to Articles 186, 191 and 193(3), a sewerage undertaker may from time to time give a direction varying the conditions which have been attached to any of its consents under this Chapter to the discharge of trade effluent into a public sewer.

(2) Subject to paragraphs (3) and (4) and Article 183, no direction shall be given under this Article with respect to a consent under this Chapter

- (a) within two years from the date of the consent; or
- (b) where a previous direction has been given under this Article with respect to that consent, within two years from the date on which notice was given of that direction.

(3) Paragraph (2) shall not prevent a direction being given before the time specified in that paragraph if it is given with the consent of the holder of the consent under this Chapter.

(4) A direction given with the consent mentioned in paragraph (3) shall not affect the time at which any subsequent direction may be given.

(5) The sewerage undertaker shall give notice of any direction under this Article with respect to a consent under this Chapter to the holder of that consent.

(6) A notice under paragraph (5) shall

- (a) include information as to the right of appeal conferred by paragraph (1) of Article 184; and
- (b) state the date, being a date not less than two months after the giving of the notice, on which (subject to paragraph (2) of that Article) the direction is to take effect.

(7) For the purposes of this Article references to the variation of conditions include references to the addition or annulment of a condition and to the attachment of a condition to a consent to which no condition was previously attached.

(8) In this Chapter “holder”, in relation to a consent under this Chapter, means the person on whose application the consent was granted (or a person treated as such under Article 177(4)).

### **Variations within time limit**

**183.**—(1) A sewerage undertaker may give a direction under Article 182 before the time specified in paragraph (2) of that Article and without the consent required by paragraph (3) of that Article if it considers it necessary to do so in order to provide proper protection for persons likely to be affected by the discharges which could lawfully be made apart from the direction.

(2) Subject to Article 192(3), where a sewerage undertaker gives a direction by virtue of paragraph (1), the undertaker shall be liable to pay compensation to the holder of the consent under this Chapter to which the direction relates unless the undertaker is of the opinion that the direction is required

- (a) in consequence of a change of circumstances which
  - (i) has occurred since the beginning of the period of two years in question; and
  - (ii) could not reasonably have been foreseen at the beginning of that period; and
- (b) otherwise than in consequence of consents for discharges given after the beginning of that period.

(3) Where a sewerage undertaker gives a direction by virtue of paragraph (1) and is of the opinion mentioned in paragraph (2), it shall be the duty of the undertaker to give notice of the reasons for its opinion to the holder of the consent under this Chapter to which the direction relates.

(4) For the purposes of this Article the circumstances referred to in paragraph (2)(a) may include the information available as to the discharges to which the consent in question relates or as to the interaction of those discharges with other discharges or matter.

(5) The Department may by regulations make provision as to the manner of determining the amount of any compensation payable under this Article, including the factors to be taken into account in determining that amount.

### **Appeals with respect to variations of consent**

**184.**—(1) The holder of any consent under this Chapter may

- (a) within two months of the giving to him under paragraph (5) of Article 182 of a notice of a direction under that Article ; or
- (b) with the written permission of the Authority, at any later time,

appeal to the Authority against the direction.

(2) Subject to paragraph (3), if an appeal against a direction is brought under paragraph (1) before the date specified under Article 182(6)(b) in the notice of the direction, the direction shall not take effect until the appeal is withdrawn or finally disposed of.

(3) In so far as the direction which is the subject of an appeal relates to the making of charges payable by the occupier of any trade premises, it may take effect on any date after the giving of the notice.

(4) On an appeal under paragraph (1) with respect to a direction, the Authority shall have power

- (a) to annul the direction given by the sewerage undertaker; and
- (b) to substitute for it any other direction, whether more or less favourable to the appellant;

and any direction given by the Authority may include provision as to the charges to be made for any period between the giving of the notice by the sewerage undertaker and the determination of the appeal.

(5) A person to whom notice is given in pursuance of Article 183(3) may, in accordance with regulations made by the Department, appeal to the Authority against the notice on the ground that compensation should be paid in consequence of the direction to which the notice relates.

(6) On an appeal under paragraph (5) the Authority may direct that Article 183 shall have effect as if the sewerage undertaker in question were not of the opinion to which the notice relates.

(7) Any consent given or conditions imposed by the Authority under this Article in respect of discharges of trade effluent shall have effect for the purposes of this Chapter as if given or imposed by the sewerage undertaker in question.

(8) The powers of the Authority under this Article shall be subject to the provisions of Articles 191, 193 and 196.

### **Review by DOE of consents relating to special category effluent**

**185.**—(1) Where the occupier of any trade premises is (whether or not in accordance with a notice under Article 190) for the time being authorised by virtue of a consent under this Chapter to make discharges of any special category effluent from those premises into a sewerage undertaker's public sewer, DOE may review the questions

- (a) whether the discharges authorised by the consent should be prohibited; and
  - (b) whether, if they are not prohibited, any requirements should be imposed as to the conditions on which they are made.
- (2) Subject to paragraph (3), DOE shall not review any question under this Article unless
- (a) the consent or variation by virtue of which the discharges in question are made has not previously been the subject-matter of a review and was given or made
    - (i) before the transfer date; or
    - (ii) in contravention of Article 191;
  - (b) a period of more than two years has elapsed since the time, or last time, when notice of DOE's determination on any reference or review relating to that consent or the consent to which that variation relates was served under Article 190 on the occupier of the trade premises in question; or
  - (c) there has, since the time, or last time, when such a notice was so served, been a contravention of any provision which was included in compliance with a requirement of a notice under Article 190 in the consent or variation by virtue of which the discharges in question are made.
- (3) Paragraph (2) shall not apply if the review is carried out
- (a) for the purpose of enabling Her Majesty's Government in the United Kingdom to give effect to any Community obligation or to any international agreement to which the United Kingdom is for the time being a party; or
  - (b) for the protection of public health or of flora and fauna dependent on an aquatic environment.

### *Application for variation of time for discharge*

### **Application for variation of time for discharge**

**186.**—(1) If, after a direction has been given under any of the preceding provisions of this Chapter requiring that trade effluent shall not be discharged until a specified date, it appears to the sewerage undertaker in question that in consequence—

(a) of a failure to complete any works required in connection with the reception and disposal of the trade effluent; or

(b) of any other exceptional circumstances,

a later date ought to be substituted for the date so specified in the direction, the undertaker may apply to the Authority for such a substitution.

(2) The Authority shall have power, on an application under paragraph (1), to vary the direction so as to extend the period during which the trade effluent may not be discharged until the date specified in the application or, if it thinks fit, any earlier date.

(3) Not less than one month before making an application under paragraph (1) a sewerage undertaker shall give notice of its intention to the holder of the consent under this Chapter in respect of the trade premises from which the trade effluent is to be discharged.

(4) The Authority, before varying a direction on an application under paragraph (1), shall take into account any representations made to it by the person to whom notice is given under paragraph (3).

#### *Agreements with respect to the disposal etc. of trade effluent*

#### **Agreements with respect to the disposal etc. of trade effluent**

**187.**—(1) Subject to Articles 188 and 191, a sewerage undertaker may enter into and carry into effect—

- (a) an agreement with the owner or occupier of any trade premises within its area for the reception and disposal by the undertaker of any trade effluent produced on those premises;
- (b) an agreement with the owner or occupier of any such premises under which it undertakes, on such terms as may be specified in the agreement, to remove and dispose of substances produced in the course of treating any trade effluent on or in connection with those premises.

(2) Without prejudice to the generality of paragraph (1), an agreement such as is mentioned in sub-paragraph (a) of that paragraph may, in particular, provide—

- (a) for the construction or extension by the sewerage undertaker of such works as may be required for the reception or disposal of the trade effluent; and
- (b) for the repayment by the owner or occupier, as the case may be, of the whole or part of the expenses incurred by the undertaker in carrying out its obligations under the agreement.

(3) The power of a sewerage undertaker to enter into an agreement under this Article includes a power, by that agreement, to authorise such a discharge as apart from the agreement would require a consent under this Chapter.

#### **Reference to DOE of agreements relating to special category effluent**

**188.**—(1) Where a sewerage undertaker and the owner or occupier of any trade premises are proposing to enter into an agreement under Article 187 with respect to, or to any matter connected with, the reception or disposal of any special category effluent, it shall be the duty of the undertaker to refer to DOE the questions

- (a) whether the operations which would, for the purposes of or in connection with the reception or disposal of that effluent, be carried out in pursuance of the proposed agreement should be prohibited; and
- (b) whether, if they are not prohibited, any requirements should be imposed as to the conditions on which they are carried out.

(2) It shall be the duty of a sewerage undertaker where it has made a reference under this Article not to give any consent or enter into any agreement with respect to any such operations as are mentioned in paragraph (1)(a) at any time before DOE serves notice on the undertaker of its determination on the reference.

(3) Every reference under this Article shall be made in writing and shall be accompanied by a copy of the proposed agreement.

(4) It shall be the duty of a sewerage undertaker, on making a reference under this Article, to serve a copy of the reference on the owner or the occupier of the trade premises in question, according to whether it is the owner or occupier who is proposing to be a party to the agreement.

(5) If a sewerage undertaker fails, before giving any consent or entering into any agreement with respect to any such operations as are mentioned in sub-paragraph (a) of paragraph (1), to refer to DOE any question which it is required by that paragraph to refer to DOE, the undertaker shall be guilty of an offence and liable

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(6) If DOE becomes aware

- (a) that a sewerage undertaker and the owner or occupier of any trade premises are proposing to enter into any such agreement as is mentioned in paragraph (1), and
- (b) that the sewerage undertaker has not referred to DOE any question which it is required to refer to DOE by that paragraph,

DOE may proceed as if the reference required by that paragraph had been made.

(7) If DOE becomes aware that any consent has been given or agreement entered into with respect to any such operations as are mentioned in sub-paragraph (a) of paragraph (1) without the sewerage undertaker in question having referred to DOE any question which it is required by that paragraph to refer to it, DOE may exercise its powers of review under Article 185 or, as the case may be, Article 189, notwithstanding anything in paragraph (2) of the Article in question.

### **Review by DOE of agreements relating to special category effluent**

**189.**—(1) Where any person, as the owner or occupier of any trade premises, is (whether or not in accordance with a notice under Article 190) for the time being a party to any agreement under Article 187 with respect to, or to any matter connected with, the reception or disposal of special category effluent, DOE may review the questions

- (a) whether the operations which, for the purposes of or in connection with the reception or disposal of that effluent, are carried out in pursuance of the agreement should be prohibited; and
- (b) whether, if they are not prohibited, any requirements should be imposed as to the conditions on which they are carried out.

(2) Subject to paragraph (3), DOE shall not review any question under this Article unless

- (a) the agreement by virtue of which the operations in question are carried out has not previously been the subject matter of a review and was entered into
  - (i) before the transfer date; or
  - (ii) in contravention of Article 191;
- (b) a period of more than two years has elapsed since the time, or last time, when notice of DOE's determination on any reference or review relating to that agreement was served under Article 190 on the owner or occupier of the trade premises in question; or



- (c) there has, since the time, or last time, when such a notice was so served, been a contravention of any provision which was included in compliance with a requirement of a notice under Article 190 in the agreement by virtue of which the operations in question are carried out.
- (3) Paragraph (2) shall not apply if the review is carried out
  - (a) for the purpose of enabling Her Majesty's Government in the United Kingdom to give effect to any Community obligation or to any international agreement to which the United Kingdom is for the time being a party; or
  - (b) for the protection of public health or of flora and fauna dependent on an aquatic environment.
- (4) References in this Article to an agreement include references to an agreement as varied from time to time by a notice under Article 190.

*References and reviews relating to special category effluent*

**Powers and procedure on references and reviews**

- 190.**—(1) This Article applies to
- (a) any reference to DOE under Article 178, 181 or 188; and
  - (b) any review by DOE under Article 185 or 189.
- (2) On a reference or review to which this Article applies, it shall be the duty of DOE, before determining the questions which are the subject matter of the reference or review
- (a) to give an opportunity of making representations or objections to DOE—
    - (i) to the sewerage undertaker in question;
    - (ii) in the case of a reference or review relating to a consent under this Chapter, to the occupier of the trade premises in question;
    - (iii) in the case of a reference or review relating to an agreement or proposed agreement under this Chapter, to the owner or the occupier of the trade premises in question, according to whether it is the owner or the occupier of those premises who is a party or proposed party to the relevant agreement; and
  - (b) to consider any representations or objections which are duly made to DOE with respect to those questions by a person to whom DOE is required to give such an opportunity and which are not withdrawn.
- (3) On determining any question on a reference or review to which this Article applies, DOE shall serve notice on the sewerage undertaker in question and on the person specified in paragraph (2)(a) (ii) or (as the case may be) (iii).
- (4) A notice under this Article shall state, according to what has been determined
- (a) that the discharges or operations to which, or to the proposals for which, the reference or review relates, or such of them as are specified in the notice, are to be prohibited; or
  - (b) that those discharges or operations, or such of them as are so specified, are to be prohibited except in so far as they are made or carried out in accordance with conditions which consist of or include conditions so specified; or
  - (c) that DOE has no objection to those discharges or operations and does not intend to impose any requirements as to the conditions on which they are made or carried out.
- (5) Without prejudice to Article 191, a notice under this Article, in addition to containing such provision as is specified in paragraph (4), may do one or both of the following, that is to say

- (a) vary or revoke the provisions of a previous notice with respect to the discharges or operations in question; and
  - (b) for the purpose of giving effect to any prohibition or other requirement contained in the notice, vary or revoke any consent under this Chapter or any agreement under Article 187.
- (6) Nothing in paragraph (1) or (2) of Article 179 shall be construed as restricting the power of DOE, by virtue of paragraph (4)(b), to specify such conditions as DOE considers appropriate in a notice under this Article.
- (7) DOE shall send a copy of every notice served under this Article to the Authority.

#### **Effect of determination on reference or review**

**191.**—(1) Where a notice under Article 190 has been served on a sewerage undertaker, it shall be the duty

- (a) of the undertaker; and
- (b) in relation to that undertaker, of the Authority,

so to exercise the powers to which this Article applies as to secure compliance with the provisions of the notice.

(2) This paragraph applies to the following powers, that is to say

- (a) in relation to a sewerage undertaker, its power to give a consent under this Chapter, any of its powers under Article 179 or 182 and any power to enter into or vary an agreement under Article 187; and
- (b) in relation to the Authority, any of its powers under this Chapter.

(3) Nothing in paragraph (1) or (2) of Article 179 shall be construed as restricting the power of a sewerage undertaker, for the purpose of complying with this Article, to impose any condition specified in a notice under Article 190.

(4) A sewerage undertaker which fails to perform its duty under paragraph (1) shall be guilty of an offence and liable

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(5) DOE may, for the purpose of securing compliance with the provisions of a notice under Article 190, by serving notice on the sewerage undertaker in question and on the person specified in Article 190(2)(a)(ii), vary or revoke

- (a) any consent given under this Chapter to make discharges of any special category effluent; or
- (b) any agreement under Article 187.

#### **Compensation in respect of determinations made for the protection of public health etc.**

**192.**—(1) Subject to paragraph (2), DOE shall be liable to pay compensation to the relevant person in respect of any loss or damage sustained by that person as a result of any notice under Article 190 containing DOE's determination on a review which

- (a) has been carried out for the protection of public health or of flora and fauna dependent on an aquatic environment; and
- (b) but for being so carried out would have been prohibited by virtue of Article 185(2) or 189(2).

(2) DOE shall not be required to pay any compensation under this Article if the determination in question is shown to have been given in consequence of—

- (a) a change of circumstances which could not reasonably have been foreseen at the time when the period of two years mentioned in Article 185(2) or, as the case may be, Article 189(2) began to run; or
  - (b) consideration by DOE of material information which was not reasonably available to DOE at that time.
- (3) No person shall be entitled to any compensation under Article 183 in respect of anything done in pursuance of Article 191.
- (4) In this Article “the relevant person” means
- (a) in relation to a review of a consent, the holder of the consent;
  - (b) in relation to a review of an agreement, the owner or occupier of the trade premises in question, according to whether it is the owner or the occupier who is a party to the agreement.

### *Supplemental provisions of Chapter III*

#### **Restrictions on power to fix charges under Chapter III**

**193.**—(1) On any appeal under Article 180 or 184(1) conditions providing for the payment of charges to the sewerage undertaker in question shall not be determined by the Authority except in so far as no provision is in force by virtue of a charges scheme under Article 201 in respect of any such receptions, discharges, removals or disposals of effluent or substances as are of the same description as the reception, discharge, removal or disposal which is the subject matter of the appeal.

(2) In so far as any such conditions as are mentioned in paragraph (1) do fall to be determined by the Authority, they shall be determined having regard to the desirability of that undertaker's—

- (a) recovering the expenses of complying with its obligations in consequence of the consent or agreement to which the conditions relate; and
- (b) securing a reasonable return on its capital.

(3) To the extent that paragraph (1) excludes any charges from a determination on an appeal those charges shall be fixed from time to time by a charges scheme under Article 201 but not otherwise.

#### **Power of DOE to require information for the purpose of its functions in relation to special category effluent**

**194.**—(1) For the purpose of the discharge of its functions under this Chapter, DOE may, by notice in writing served on any person, require that person to furnish such information specified in the notice as DOE reasonably considers it needs, in such form and within such period following service of the notice, or at such time, as is so specified.

(2) A person who

- (a) fails, without reasonable excuse, to comply with a requirement imposed under paragraph (1), or
- (b) in furnishing any information in compliance with such a requirement, makes any statement which he knows to be false or misleading in a material particular,

shall be guilty of an offence.

(3) A person guilty of an offence under paragraph (2) shall be liable

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.

### **Evidence from meters etc.**

**195.** Any meter or apparatus provided in pursuance of this Chapter in any trade premises for the purpose of measuring, recording or determining the volume, rate of discharge, nature or composition of any trade effluent discharged from those premises shall be presumed in any proceedings to register accurately, unless the contrary is shown.

### **Statement of case on appeal**

**196.**—(1) At any stage of the proceedings on an appeal under Article 180 or 184(1), the Authority may, and if so directed by the High Court shall, state in the form of a special case for the decision of the High Court any question of law arising in those proceedings.

(2) The decision of the High Court on a special case under this Article shall be deemed to be a judgment of the Court within the meaning of section 35 of the Judicature (Northern Ireland) Act 1978 (c. 23) (which relates to the jurisdiction of the Court of Appeal); but no appeal to the Court of Appeal shall be brought by virtue of this paragraph except with the leave of the High Court or of the Court of Appeal.

### **Meaning of “special category effluent”**

**197.**—(1) Subject to paragraphs (2) and (3), trade effluent shall be special category effluent for the purposes of this Chapter if

- (a) such substances as may be prescribed are present in the effluent or are present in the effluent in prescribed concentrations; or
- (b) the effluent derives from any such process as may be prescribed or from a process involving the use of prescribed substances or the use of such substances in quantities which exceed the prescribed amounts.

(2) If trade effluent is produced, or to be produced, by operating any installation or plant or otherwise carrying on any activity, the operation or carrying on of which requires a permit, that effluent shall not be special category effluent for the purposes of this Chapter as from the determination date relating to the installation, plant or activity in question.

(3) In paragraph (2)—

- (a) “determination date”, in relation to an installation, plant or activity, means—
  - (i) in the case of an installation, plant or activity in relation to which a permit is granted, the date on which it is granted, whether in pursuance of the application, or on an appeal, of a direction to grant it;
  - (ii) in the case of an installation, plant or activity in relation to which the grant of a permit is refused, the date of refusal or, on appeal, of the affirmation of the refusal, and in this paragraph the references to an appeal are references to an appeal under regulations under Article 4 of the [Environment \(Northern Ireland\) Order 2002 \(NI 17\)](#);
- (b) “permit” means a permit granted, under regulations under that Article, by an authority exercising functions under the regulations that are exercisable for the purpose of preventing or reducing emissions into the air, water and land.

(4) Regulations under this Article shall be made by DOE.

### **Power to apply Chapter III to specified activities**

**198.**—(1) The Department may by order provide, in relation to discharge into public sewers—

- (a) that a liquid or other matter of a description specified in the order shall be treated as if it were trade effluent for the purposes of this Chapter; or

(b) that—

- (i) the discharge restrictions shall not apply to a liquid or other matter of a description specified in the order; and
- (ii) (in the case of a liquid) the liquid shall be deemed not to be trade effluent for the purposes of this Chapter.

(2) An order under paragraph (1) may so provide whether or not the liquid or other matter specified would otherwise have fallen within (or, as the case may be, outside) a proper construction of “trade effluent” as defined in Article 199(1).

(3) An order under paragraph (1) may so provide, in relation to the liquid or other matter specified, either generally or in particular cases or classes of case or for particular purposes or as otherwise specified in the order.

(4) In this Article, references to the discharge restrictions are references to—

- (a) the restrictions imposed by sub-paragraphs (a) and (b) of Article 163(3); and
- (b) the restrictions imposed by Article 168 so far as it relates to anything falling within sub-paragraph (a) or (b) of paragraph (1) of that Article.

(5) Where any provisions of this Chapter are to apply to a liquid or other matter by virtue of an order under paragraph (1)(a), the order may provide for them so to apply subject to such modifications as may be specified in the order and, in particular, subject to any such modification of the meaning for the purposes of this Chapter of the expression “trade premises” as may be so specified.

(6) The Department may include in an order under paragraph (1) such provisions as appear to it expedient for modifying any statutory provision as it applies in relation to the discharge into sewers of any liquid or other matter specified in the order.

(7) Where the discharge restrictions do not apply to a liquid by virtue of an order under paragraph (1)(b), paragraphs (4) to (9) of Article 163 and Articles 165 and 166 shall have effect in relation to communication with a sewer for the purpose of making any discharge of that liquid as they apply in relation to any other discharges which are authorised by paragraph (1) of Article 163.

(8) The Department may include in an order under this Article such other supplemental, incidental or transitional provision as appears to it to be expedient.

(9) An order made under this Article shall not be made unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

(10) In this Article, references to a liquid are to a liquid either with or without particles of matter in suspension in the liquid.

### *Interpretation of Chapter III*

#### **Interpretation of Chapter III**

**199.**—(1) In this Chapter, subject to Article 198—

“special category effluent” has the meaning given by Article 197;

“trade effluent”—

- (a) means any liquid, either with or without particles of matter in suspension in the liquid, which is wholly or partly produced in the course of any trade or industry carried on at trade premises; and
- (b) in relation to any trade premises, means any such liquid which is so produced in the course of any trade or industry carried on at those premises,

but does not include domestic sewage;

“trade premises” means, subject to paragraph (2), any premises used or intended to be used for carrying on any trade or industry.

(2) For the purposes of this Chapter, any land or premises used or intended for use (in whole or in part and whether or not for profit)—

- (a) for agricultural or horticultural purposes or for the purposes of fish farming;
- (b) for scientific research or experiment;
- (c) for the purposes of a hospital or nursing home;

shall be deemed to be premises used for carrying on a trade or industry; and the references to a trade or industry in the definition of “trade effluent” in paragraph (1) shall include references to agriculture, horticulture, fish farming, scientific research or experiment and the carrying on of a hospital or nursing home.

(3) In relation to any consent under this Chapter “holder” has the meaning given by Article 182(8).

(4) Every application or consent made or given under this Chapter shall be made or given in writing.

(5) Nothing in this Chapter shall affect any right with respect to water in a watercourse, or authorise any infringement of such a right, except in so far as any such right would dispense with the requirements of this Chapter so far as they have effect by virtue of any regulations under Article 197.

## PART VII

### FINANCIAL PROVISIONS

#### CHAPTER I

#### CHARGES

##### *Manner of fixing charges*

#### **Powers of undertakers to charge**

**200.**—(1) Subject to the following provisions of this Chapter, the powers of every relevant undertaker shall include power—

- (a) to fix charges for any services provided or other things done in the course of carrying out its functions and, in the case of a sewerage undertaker, charges to be paid in connection with the carrying out of its trade effluent functions; and
  - (b) to demand and recover charges fixed under this Article from any persons to whom the undertaker provides services or in relation to whom it carries out trade effluent functions.
- (2) Subject to paragraphs (3) to (6), the powers conferred by paragraph (1) shall be exercisable—
- (a) by or in accordance with a charges scheme under Article 201; or
  - (b) by or in accordance with agreements with the persons to be charged.
- (3) Sub-paragraph (b) of paragraph (2) shall not have effect in relation to—
- (a) charges for the supply of water to a dwelling, or
  - (b) charges for the provision of sewerage services in respect of a dwelling.
- (4) In paragraph (3) “dwelling” means —
- (a) a private dwelling-house (which may be a building or part of a building);

(b) a caravan within the meaning of the Caravans Act (Northern Ireland) 1963 (c. 17);

(c) a boat or similar structure designed or adapted for use as a place of permanent habitation.

(5) Sub-paragraph (b) of paragraph (2) shall have effect in relation to the exercise of powers with respect to charges in connection with the carrying out of a sewerage undertaker's trade effluent functions only in so far as provision for the fixing, demanding or recovery of such charges may be contained in an agreement entered into in accordance with Article 187.

(6) The power of a sewerage undertaker to charge, by virtue of paragraph (1), for any services provided in the course of carrying out its duty under Article 157(1) shall be exercisable only by or in accordance with a charges scheme under Article 201.

(7) Except in so far as this Chapter otherwise provides, a relevant undertaker may fix charges under this Article by reference to such matters, and may adopt such methods and principles for the calculation and imposition of the charges, as appear to the undertaker to be appropriate.

(8) The powers in relation to which this Article has effect shall be exercisable notwithstanding any local statutory provision which provides that no charge shall be made for a particular service.

(9) Nothing in paragraphs (1) to (8) or in any charges scheme under Article 201 shall affect any power of a relevant undertaker to fix charges under any power conferred otherwise than by virtue of this Chapter.

### Charges schemes

**201.**—(1) A relevant undertaker may make a scheme ("a charges scheme") which has effect in relation to a specified period of 12 months and does any one or more of the following, that is to say—

- (a) fixes the charges to be paid for any services provided or other things done by the undertaker in the course of carrying out its functions;
- (b) in the case of a sewerage undertaker, requires such charges as may be fixed by the scheme to be paid to the undertaker where, in the circumstances set out in the scheme—
  - (i) a notice containing an application for a consent is served on the undertaker under Article 176;
  - (ii) such a consent as is necessary for the purposes of Chapter III of Part VI is given by the undertaker; or
  - (iii) a discharge is made in pursuance of such a consent; and
- (c) makes provision with respect to the times and methods of payment of the charges fixed by the scheme.

(2) The persons who may be required by a charges scheme to pay any charge fixed by virtue of paragraph (1)(b) shall be the person who serves the notice, the person to whom the consent is given or, as the case may be, any person who makes a discharge in pursuance of the consent at any time during the period to which, in accordance with the scheme, the charge relates.

(3) A charges scheme which requires the payment of charges where a discharge has been made in pursuance of such a consent as is mentioned in paragraph (1)(b) may impose—

- (a) a single charge in respect of the whole period for which the consent is in force;
- (b) separate charges in respect of different parts of that period; or
- (c) both such a single charge and such separate charges.

(4) A sewerage undertaker is under a duty to ensure that any charges scheme made by the undertaker, so far as having effect to recover the undertaker's costs of providing a sewer by virtue of its duty under Article 157(1), causes those costs to be borne by the undertaker's customers generally; and a sewerage undertaker's duty under this paragraph shall be enforceable under Article 30—

- (a) by the Department; or

- (b) with the consent of or in accordance with a general authorisation given by the Department, by the Authority.
- (5) A charges scheme may contain supplemental, consequential and transitional provision for the purposes of the scheme.
- (6) Nothing in any charges scheme shall affect—
  - (a) any power of a relevant undertaker in a case not falling within Article 200(3) to enter into such an agreement with any person in any particular case as determines the charges to be made for the services provided to that person by the undertaker; or
  - (b) the power of a sewerage undertaker to enter into any agreement under Article 187 on terms that provide for the making of payments to the undertaker.
- (7) A charges scheme shall not take effect unless it has been approved by the Authority.
- (8) The Department may give guidance to the Authority on the exercise of its power under paragraph (7); and the Authority shall have regard to that guidance in the exercise of that power.
- (9) The Department shall arrange for any guidance given by it under paragraph (8) to be published in such manner as it considers appropriate.
- (10) The Authority may not exercise its power under paragraph (7) for the purpose of limiting the total revenues of relevant undertakers from charges fixed by or in accordance with charges schemes.
- (11) The Department may, in relation to any relevant undertaker, make a scheme (“an initial scheme”) having effect in relation to a period of 12 months from the day appointed for the coming into operation of Article 200.
- (12) Subject to paragraph (13), an initial scheme—
  - (a) shall comply with the provisions of this Chapter relating to the contents of a charges scheme; and
  - (b) shall have effect for the purposes of this Order as if it were a charges scheme duly made by the undertaker under this Article.
- (13) Paragraphs (7) to (10) do not apply to an initial scheme.

### **Regulations as to provisions to be included in charges schemes**

- 202.**—(1) The provisions of any charges scheme under Article 201 must comply with any requirements prescribed by the Department by regulations.
- (2) Without prejudice to the generality of paragraph (1), regulations under this Article may—
    - (a) prescribe items with respect to which a consumer is, or is not, to be liable to pay a charge;
    - (b) make provision as to the matters by reference to which charges may or must be fixed and as to methods and principles to be adopted in calculating and imposing charges;
    - (c) require alternative bases of charging to be made available to consumers;
    - (d) require special provision, including exemption from specified charges, to be made for the purpose of—
      - (i) assisting individuals who are or would be liable to pay any charges and who fall within any class of individuals appearing to the Department to require special provision; or
      - (ii) promoting the efficient use of water.
  - (3) Regulations under this Article imposing requirements for the purpose mentioned in paragraph (2)(d)(i) may—
    - (a) prescribe the classes of persons for whom special provision is to be made in relation to any premises by reference to matters such as financial circumstances, age or ill-health;



- (b) make provision as to the method of identifying those entitled to assistance under the regulations.

(4) The power to make regulations under this Article may not be exercised for the purpose of limiting the total revenues of relevant undertakers from charges fixed by or in accordance with charges schemes.

### **Liability for charges**

**203.**—(1) Subject to the following provisions of this Article and except in so far as provision to the contrary is made by any agreement to which the undertaker is a party—

- (a) supplies of water provided by a water undertaker shall be treated for the purposes of this Chapter as services provided to the occupiers for the time being of any premises supplied; and
- (b) sewerage services provided by a sewerage undertaker shall be treated for the purposes of this Chapter as provided to the occupiers for the time being of any premises which—
  - (i) are drained by a sewer or drain connecting, either directly or through an intermediate sewer or drain, with such a public sewer of the undertaker as is provided for foul water or surface water or both; or
  - (ii) are premises the occupiers of which have, in respect of the premises, the benefit of facilities which drain to a sewer or drain so connecting.

(2) Subject to paragraph (3), charges which, under the preceding provisions of this Chapter, are fixed in relation to any premises may be imposed so that a person is made liable in relation to those premises to pay charges for services provided by a relevant undertaker after that person has ceased to be the occupier of the premises.

(3) A person shall not be made liable by virtue of paragraph (2) for any charges fixed in relation to any premises by any relevant undertaker, except where—

- (a) he fails to inform the undertaker of the ending of his occupation of the premises at least two working days before he ceases to occupy them; and
- (b) the charges are in respect of a period ending no later than with the first relevant day.

(4) For the purposes of paragraph (3), “the first relevant day”, in relation to a case in which a person has ceased to be the occupier of any premises in relation to which charges are fixed by a relevant undertaker, means whichever of the following first occurs after he ceases to occupy the premises, that is to say—

- (a) where that person informs the undertaker of the ending of his occupation of the premises less than two working days before, or at any time after, he ceases to occupy them, the twenty-eighth day after he so informs the undertaker;
- (b) any day on which any meter would normally have been read in order for the amount of the charges to be determined;
- (c) any day on which any other person informs the undertaker that he has become the new occupier of the premises.

(5) Where—

- (a) any person who is the occupier of any premises to which a supply of water is provided by a water undertaker has served notice on the undertaker for the purposes of Article 101; and
- (b) that notice is given otherwise than in connection with that person’s ceasing to be the occupier of the premises in a case in which provision is made by virtue of paragraph (2) for a person who has ceased to be the occupier of the premises to be made liable for any charges,

then, notwithstanding that that person continues to be the occupier of those premises, he shall not be liable to the undertaker (otherwise than in pursuance of a demand for a supply made since the service of the notice) for any charges in respect of any supply of water to those premises after the appropriate time.

(6) In paragraph (5) “the appropriate time”, in relation to a case in which a notice has been served for the purposes of Article 101, means whichever is the later of—

- (a) the expiry of the notice; and
- (b) the end of the period of two working days beginning with the service of the notice.

(7) In this Article any reference to two working days is a reference to a period of 48 hours calculated after disregarding any time falling on—

- (a) a Saturday or Sunday; or
- (b) Christmas Day, Good Friday or any day which is a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971 (c. 80).

### **Right of consumer to elect for charging by reference to volume**

**204.**—(1) Where—

- (a) water is supplied by a water undertaker to premises in which, or in any part of which, a person has his home; and
- (b) charges in respect of those premises are fixed by virtue of any charges scheme under Article 201 without reference to the volume of water supplied; and
- (c) the consumer falls within any description prescribed for the purposes of this Article,

the consumer may at any time give the undertaker a notice (in this Article referred to as a “measured charges notice”) requiring the undertaker to fix charges in respect of the supply by reference to the volume of water supplied.

(2) Subject to paragraph (3), a water undertaker must give effect to a measured charges notice before the end of a period determined in accordance with the undertaker’s charges scheme.

(3) A water undertaker is not obliged to give effect to a measured charges notice if—

- (a) it is not reasonably practicable to fix charges in respect of the premises by reference to the volume of water supplied; or
- (b) to do so would involve the incurring by the undertaker of unreasonable expense.

(4) Any dispute between a water undertaker and a consumer as to the application of sub-paragraph (a) or (b) of paragraph (3) may be referred to the Authority for determination under Article 61 by either party to the dispute.

(5) Where—

- (a) either the conditions in paragraph (6) or the conditions in paragraph (7) are satisfied in relation to premises in respect of which a measured charges notice has been given; and
- (b) such other conditions as may be prescribed are also satisfied in relation to the premises,

the consumer may at any time before the end of the period of 12 months beginning with the day on which the supply began to be measured by volume for charging purposes, revoke the measured charges notice by notice to the water undertaker.

(6) The conditions in this paragraph are—

- (a) that the person who gave the measured charges notice had not given any previous measured charges notice in relation to the premises; and
- (b) that he remains the consumer in respect of the premises.

(7) The conditions in this paragraph are—

- (a) that the person who gave the measured charges notice has, since the notice was given, ceased to be the consumer in respect of the premises,
- (b) that neither he nor the person who has become the consumer had given any previous measured charges notice in respect of the premises, and
- (c) that any person who was in occupation of the premises when the measured charges notice was given remains in occupation.

(8) Where a measured charges notice has been revoked under paragraph (5), the water undertaker must—

- (a) if reasonably practicable, before the end of the period of 12 months referred to in that paragraph, or
- (b) in any other case, as soon as reasonably practicable after the end of that period,

revert to fixing the charges for the supply in respect of the premises without reference to the volume of water supplied.

(9) If and so long as a water undertaker is obliged under paragraph (2) to fix charges for the supply of water in respect of any premises by reference to the volume of water supplied, a sewerage undertaker is under a corresponding obligation to fix charges in respect of foul water drainage provided by the sewerage undertaker in respect of those premises by reference to that volume.

(10) If a water undertaker is obliged under paragraph (8) to fix charges without reference to volume, a sewerage undertaker is under a corresponding obligation in respect of charges for services provided by it.

(11) Any charges scheme under Article 201—

- (a) must contain provision for determining the period mentioned in paragraph (2); and
- (b) shall have effect subject to the preceding provisions of this Article.

### **Restriction on undertakers' power to require fixing of charges by reference to volume**

**205.**—(1) Paragraph (2) applies where—

- (a) water is supplied to any premises in which, or in any part of which, a person has his home;
- (b) charges in respect of those premises have previously been fixed without reference to volume; and
- (c) such conditions as may be prescribed are satisfied in relation to the premises.

(2) Where this paragraph applies, a relevant undertaker may not by virtue of any charges scheme under Article 201 begin to fix the charges in respect of those premises by reference to volume unless either—

- (a) the consumer—
  - (i) has given the undertaker a measured charges notice under Article 204 which has not been revoked under that Article; or
  - (ii) has consented to the charges in respect of the premises being so fixed and has not revoked that consent under Article 204; or
- (b) there has been a change in the occupation of the premises and no charges have yet been demanded from the person who has become the consumer.

(3) A change in the persons occupying any premises does not constitute a change in the occupation of the premises for the purposes of paragraph (2)(b) if any person who was in occupation of the premises before the change remains in occupation after the change.

(4) Where a consumer gives consent for the purposes of paragraph (2)(a)(ii) in relation to premises in which, or in any part of which, a person has his home, he shall be treated for the purposes of paragraphs (5) to (8) of Article 204 as having given a measured charges notice under that Article.

### Connection charges

**206.**—(1) Subject to paragraph (2), nothing in this Chapter or in any other statutory provision shall entitle any relevant undertaker to fix, demand or recover an initial charge for its becoming, or for its taking steps for the purpose of becoming—

- (a) the person who provides a supply of water for domestic purposes to any premises; or
- (b) the person who provides sewerage services for the purposes of the drainage for domestic sewerage purposes of any premises.

(2) Subject to paragraph (3), nothing in paragraph (1) or in any other statutory provision shall be construed as prohibiting the fixing, demand or recovery by a relevant undertaker of—

- (a) a charge for the connection to a water supply of premises which have never at any previous time (whether before or after the coming into operation of the restriction contained in this Article) been connected to a supply of water provided for domestic purposes by a water undertaker or by any other authority or body which at that time provided supplies of water in the course of carrying out functions under any statutory provision; or
- (b) a charge for the connection to a public sewer of premises which have never at any previous time (whether before or after the coming into operation of the restriction contained in this Article) been connected to a sewer used for the drainage for domestic sewerage purposes of those premises by a sewerage undertaker or by any other authority or body which at that time provided sewerage services in the course of carrying out functions under any statutory provision.

(3) Nothing in this Chapter or in any other statutory provision or in the terms of any agreement under Article 161 shall authorise a sewerage undertaker to require any payment to be made to the undertaker in respect of the making by the undertaker of any declaration of vesting under Chapter II of Part VI or in respect of any agreement to make such a declaration.

(4) The preceding provisions of this Article, so far as they restrict the making of certain charges, shall be without prejudice—

- (a) to statutory provisions by virtue of which a relevant undertaker may recover expenses incurred by it in carrying out works; and
- (b) to the power of any such undertaker, by virtue of Article 200(7), to fix the amount of any of its other charges by reference to such matters as it thinks appropriate.

(5) In this Article “domestic sewerage purposes” has the same meaning as in Chapter II of Part VI.

### Charging for emergency use of water

**207.**—(1) Notwithstanding anything in Article 200 or in any charges scheme under Article 201 or in any agreement as to charges in respect of any supply of water, no charge may be made by any water undertaker in respect of—

- (a) water taken for the purpose of extinguishing fires or taken by the Northern Ireland Fire and Rescue Service Board for any other emergency purposes;
- (b) water taken for the purpose of testing apparatus installed or equipment used for extinguishing fires or for the purpose of training persons for fire-fighting; or
- (c) the availability of water for any purpose mentioned in sub-paragraph (a) or (b).

(2) This Article shall not prevent the making of charges in respect of work carried out at the request of or for the benefit of any person receiving a supply of water for the purposes mentioned in sub-paragraph (a) or (b) of paragraph (1).

(3) This Article shall not have the effect, where any water is used or made available for any of the purposes mentioned in sub-paragraph (a) or (b) of paragraph (1), of requiring a reduction in the charges imposed in respect of the provision for other purposes of the supply from which that water is taken.

### *Metering*

#### **Restriction on charging for metering works**

**208.**—(1) Subject to paragraphs (2) to (4) and Article 239, where any meter capable of being used in determining the amount of any charges is installed by or at the request of any relevant undertaker then, notwithstanding the provisions of any statutory provision or of any agreement to the contrary between the undertaker and any other person, the undertaker shall bear—

- (a) the expenses of installing and connecting the meter;
- (b) any expenses incurred in maintaining, repairing, disconnecting or removing the meter in accordance with any requirements of the undertaker; and
- (c) any expenses incurred in carrying out any works for purposes connected with the installation and connection of the meter or with the maintenance, repair, disconnection or removal of the meter in accordance with any such requirements.

(2) References in paragraph (1) to expenses include references to expenses incurred in meeting the needs of a disabled person.

(3) Subject to paragraph (4), paragraph (1) shall not require any relevant undertaker to bear, or prevent any such undertaker from recovering from any other person—

- (a) any expenses incurred for the purpose of enabling a condition imposed by virtue of paragraph (2) of Article 81 to be satisfied;
- (b) any sums which it is entitled to recover in pursuance of any terms or conditions determined under Article 95;
- (c) in the case of premises which do not consist of or include any building or part of a building which is occupied as a private dwelling-house, any sums which it is entitled to recover from that person by virtue of Article 104(4)(b);
- (d) any expenses incurred in relation to a meter which is or is to be used in determining the amount of—
  - (i) any charges which are to be paid in connection with the carrying out of a sewerage undertaker's trade effluent functions; or
  - (ii) any charges provision for which is contained in an agreement entered into in accordance with Article 187;
- (e) in the case of premises which do not consist of or include any building or part of a building which is occupied as a private dwelling-house, any expenses incurred in consequence of the exercise by the consumer of any option to be charged by the undertaker in relation to those premises by reference to volume rather than by reference to other matters.

(4) For the purposes of paragraph (3) the expenses which an undertaker may require someone else to bear, or may recover from another, by virtue of that paragraph shall not include any expenses incurred for the purpose of enabling conditions such as are mentioned in sub-paragraph (a) of that paragraph to be satisfied in a case in which the conditions could not have been imposed but for the

exercise by the undertaker of its power by virtue of sub-paragraph (a), (b), (d) or (e) of Article 104(2) to require the provision of a separate service pipe to any premises.

(5) The occupier of any premises where any relevant undertaker installs or has installed a meter shall in all cases bear so much of the expenses referred to in paragraph (1) as is attributable to compliance with a request made by him in accordance with any regulations under Article 209 for the positioning, in a place other than that reasonably proposed by the undertaker, either of the meter or of any pipe or apparatus installed for the purpose of facilitating the use of the meter.

(6) Paragraph (4) is subject to any regulations made by virtue of Article 209(2)(b).

(7) Any dispute between a relevant undertaker and any other person (including another such undertaker)—

(a) as to whether the undertaker or that other person should bear any expenses under this Article; or

(b) as to the amount of any expenses to be borne by any person under this Article,  
may be referred to the Authority for determination under Article 61 by either party to the dispute.

### **Further provisions relating to charging by volume**

**209.**—(1) The Department may by regulations make such provision, supplementing—

(a) the provisions of this Chapter; and

(b) so far as they relate to works for purposes connected with the fixing of charges in relation to any premises by reference to volume, the provisions of Part VIII,

as it considers appropriate with respect to the installation of meters, with respect to the connection, disconnection, use, maintenance, authentication and testing of meters and with respect to any related matters.

(2) Without prejudice to the generality of paragraph (1), regulations under that paragraph may—

(a) regulate the positioning, whether inside or outside the building or other premises in relation to which the meter is to be used, of any meter or of any pipes or apparatus appearing to any relevant undertaker to be required for the purpose of facilitating the use of any meter;

(b) require a relevant undertaker who, for the purpose of meeting the needs of a disabled person—

(i) alters the position of any meter;

(ii) installs an additional meter; or

(iii) does any other work in connection with any meter,

to bear any expenses incurred by the undertaker in doing so;

(c) make any other provision which appears to the Department to be appropriate with respect to any such pipes or apparatus;

(d) provide for a reading from a meter to be proved in such manner as may be prescribed and for a reading from a meter to be such evidence as may be prescribed of the volume of water supplied to, or of effluent discharged from, any premises;

(e) fix the method of determining the amount of the charges to be paid where it appears that a meter has given, or may have given, an incorrect reading;

(f) require a person who is not a relevant undertaker to pay the expenses incurred by such an undertaker in doing anything under the regulations or to pay contributions towards those expenses;

(g) provide for the payment of compensation in respect of anything done by a relevant undertaker under the regulations;

- (h) require disputes arising under the regulations to be referred to arbitration.

*Charging for services provided with the help of an undertaker*

**Fixing maximum charges for services provided with the help of undertakers' services**

**210.**—(1) The Authority may from time to time by order fix maximum charges which a person who is not a relevant undertaker may recover from another such person in respect of water supplies or sewerage services provided to that other person with the help of services provided by a relevant undertaker.

(2) For the purposes of this Article water supplies or sewerage services are provided to a person with the help of services provided by a relevant undertaker if—

- (a) a facility for that person to have access to a supply of water provided by a water undertaker in pipes, or to make use of sewerage services provided by a sewerage undertaker, is made available to that person otherwise than by the undertaker;
- (b) that person is provided with a supply of water in pipes by a person to whom the water is supplied, directly or indirectly, by a water undertaker; or
- (c) that person is provided with sewerage services by a person who, for the purpose of providing those services, makes use of sewerage services provided, directly or indirectly, by a sewerage undertaker.

(3) An order under this Article may require the person providing the supplies or services to furnish the person who is provided with them with such information as may be specified or described in the order.

(4) An order containing such a requirement may also provide that, in the event of the failure of the person providing the supplies or services to furnish that information, the maximum charges he is entitled to recover from the person provided with them in respect of those supplies or services shall be such as may be fixed by the order.

(5) It shall be the duty of the Authority to publish any order under this Article in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

(6) An order under this Article may fix a maximum charge either by specifying the maximum amount of the charge or by specifying a method of calculating that amount.

(7) Where a person pays a charge in respect of anything to which an order under this Article relates and the amount paid exceeds the maximum charge fixed by the order—

- (a) the amount of the excess; and
  - (b) if the order so provides, interest on that amount at a rate specified or described in the order,
- shall be recoverable by that person from the person to whom he paid the charge.

**Billing disputes**

**211.**—(1) The Department may by regulations make provision for billing disputes to be referred to the Authority for determination in accordance with the regulations.

(2) In this Article “billing dispute” means a dispute between a relevant undertaker and a customer concerning the amount of the charge which the undertaker is entitled to recover from the customer in connection with—

- (a) the supply of water for domestic purposes, in the case of a water undertaker; and
- (b) the provision of sewerage services other than by the carrying out of trade effluent functions, in the case of a sewerage undertaker.

- (3) Regulations under this Article may only be made after consulting—
- (a) the Authority, and
  - (b) persons or bodies appearing to the Department to be representative of persons likely to be affected by the regulations.
- (4) Regulations under this Article may provide that, where a billing dispute is referred to the Authority, it may either—
- (a) determine the dispute; or
  - (b) appoint an arbitrator to determine it.
- (5) Any person determining any billing dispute in accordance with regulations under this Article shall, in such manner as may be specified in the regulations, give his reasons for reaching his decision with respect to the dispute.
- (6) Regulations under this Article may provide—
- (a) that disputes may be referred to the Authority under this Article only by prescribed persons; and
  - (b) for any determination to be final and enforceable as if it were a judgment of a county court.
- (7) Except in such circumstances (if any) as may be prescribed—
- (a) the Authority or an arbitrator appointed by it shall not determine any billing dispute which is the subject of proceedings before, or with respect to which judgment has been given by, any court; and
  - (b) neither party to any billing dispute which has been referred to the Authority for determination in accordance with regulations under this Article shall commence proceedings before any court in respect of that dispute pending its determination in accordance with the regulations.
- (8) No relevant undertaker may commence proceedings before any court in respect of any charge in connection with the supply of water for domestic purposes or (as the case may be) the provision of sewerage services other than by the carrying out of trade effluent functions unless, not less than 28 days before doing so, the customer concerned was informed by it, in such form and manner as may be prescribed, of—
- (a) its intention to commence proceedings;
  - (b) the customer's rights by virtue of this Article; and
  - (c) such other matters (if any) as may be prescribed.
- (9) Where a dispute is referred to the Authority in accordance with regulations made under this Article, it shall be the duty of the undertaker concerned to give the Authority such information as it may reasonably require for the purpose of assisting it in determining the dispute.
- (10) Article 260 shall have effect, with the necessary modifications, in relation to information which the Authority requires for that purpose as it has effect in relation to information which the Department requires for purposes mentioned in paragraph (1) of that Article.
- (11) For the purposes of this Article—
- “charge” means any charge fixed by a scheme made under Article 201;
  - “customer” means any person to whom the relevant undertaker provides services.

## Interpretation of Chapter I

### 212. In this Chapter—

“consumer”—



- (a) in relation to the supply of water by a water undertaker to any premises, means a person who is for the time being the person on whom liability to pay charges to the undertaker in respect of that supply of water would fall, and
  - (b) in relation to the provision of sewerage services in respect of any premises, means a person who is for the time being the person on whom liability to pay charges to the undertaker in respect of those services would fall;
- “trade effluent functions”, in relation to a sewerage undertaker, means its functions under Chapter III of Part VI.

## CHAPTER II

### FINANCIAL ASSISTANCE FOR UNDERTAKERS

#### **Grants by the Department to relevant undertakers**

**213.**—(1) The Department may make grants to relevant undertakers for the purpose of defraying or contributing towards—

- (a) any costs they may incur; or
- (b) any losses they may sustain,

by reason of compliance with requirements imposed by regulations under Article 202.

(2) A grant under paragraph (1)—

- (a) shall be of such amount;
- (b) shall be payable at such time or times; and
- (c) shall be paid subject to such conditions,

as the Department, with the approval of DFP, may determine.

(3) The Department shall make grants to relevant undertakers of amounts appearing to the Department to be equal to discounts provided by undertakers in respect of any charges payable to them in, or in respect of, the initial period.

(4) In paragraph (3) “the initial period” means the period of three years from the day appointed for the coming into operation of Article 200.

(5) Grants under paragraph (3)—

- (a) shall be payable at such time or times; and
- (b) shall be paid subject to such conditions,

as the Department, with the approval of DFP, may determine.

#### **Financial assistance where special administration orders made**

**214.**—(1) Where a special administration order is for the time being in force in relation to a company, the Department, may—

- (a) make to the company grants or loans of such sums as appear to it to be appropriate for the purpose of facilitating the achievement of the purposes of the order;
- (b) agree to indemnify the person appointed to achieve the purposes of the order in respect of liabilities incurred and loss or damage sustained by that person in connection with the carrying out of his functions under the order.

(2) The Department may guarantee, in such manner and on such conditions as it may think fit, the repayment of the principal of, the payment of interest on and the discharge of any other financial

obligation in connection with any sum which is borrowed from any person by a company in relation to which a special administration order is in force at the time when the guarantee is given.

(3) Without prejudice to any provision of regulations under Article 41(3)—

- (a) the terms and conditions on which a grant is made to any company under this Article may require the whole or a part of the grant to be repaid to the Department if there is a contravention of the other terms and conditions on which the grant is made; and
- (b) any loans which the Department makes to a company under this Article shall be repaid to it at such times and by such methods, and interest on the loans shall be paid to it at such rates and at such times, as it may from time to time direct.

(4) Where any guarantee is given by the Department under this Article—

- (a) the Department shall immediately lay a statement of the guarantee before the Assembly; and
- (b) if any sum is paid out for fulfilling the guarantee, the Department shall, as soon as possible after the end of each financial year (beginning with that in which the sum is paid out and ending with that in which all liability in respect of the principal of the sum and in respect of the interest thereon is finally discharged), lay before the Assembly a statement relating to that sum.

(5) Without prejudice to any provision of regulations under Article 41(3), if any sums are paid out in fulfilment of a guarantee given under this Article, the company which borrowed the sums in respect of which the guarantee was given shall make to the Department, at such times and in such manner as the Department may from time to time direct—

- (a) payments of such amounts as the Department may so direct in or towards repayment of the sums so paid out; and
- (b) payments of interest, at such rate as the Department may so direct, on what is outstanding for the time being in respect of sums so paid out.

(6) Any sums received under paragraph (3) or (5) by the Department shall be paid into the Consolidated Fund.

(7) There shall be paid out of money appropriated by Act of the Assembly—

- (a) any grant or loan made under this Article;
- (b) any sum required to be paid by the Department in respect of an indemnity given under this Article;
- (c) any sums required by the Department for fulfilling a guarantee given under this Article.

(8) The powers of the Department under paragraphs (1) and (2) are exercisable only with the approval of DFP; and directions under paragraph (3) or (5) also require that approval.

## PART VIII

### UNDERTAKERS' POWERS AND WORKS

#### CHAPTER I

#### UNDERTAKERS' POWERS

##### *Abstraction and impounding of water*

##### **Abstraction and impounding of water**

**215.**—(1) A relevant undertaker shall have power, for the purposes of carrying out its functions as such, to abstract water from, or impound water in, any waterway, or water contained in any underground strata, in the area of that undertaker.

(2) Paragraph (1) is subject to regulations under Article 20 of the Water Order.

(3) In paragraph (1) “waterway” has the same meaning as in the Water Order.

##### *Powers in relation to land*

##### **Compulsory acquisition**

**216.** Schedule 7 (which makes provision with respect to the compulsory acquisition of land) shall have effect in relation to a relevant undertaker.

##### **Restriction on disposals of land**

**217.**—(1) A company holding an appointment under Chapter I of Part III shall not dispose of any of its protected land, except with the consent of, or in accordance with a general authorisation given by, the Department.

(2) A consent or authorisation for the purposes of this Article shall be set out in a notice served by the Department on the company which is or may be authorised, by virtue of the provision contained in the notice, to dispose of land or, as the case may be, on every such company.

(3) A consent or authorisation for the purposes of this Article may be given on such conditions as the Department considers appropriate.

(4) Without prejudice to the generality of paragraph (3) and subject to paragraph (5), the conditions of a consent or authorisation for the purposes of this Article may include—

- (a) a requirement that, before there is any disposal, an opportunity of acquiring the land in question is to be made available, in such manner and on such terms as may be specified in or determined under provision contained in the notice setting out the consent or authorisation, to such person as may be so specified or determined;
- (b) a requirement that the company making the disposal has complied with such of the conditions of its appointment under Chapter I of Part III as relate to the disposal of its protected land;
- (c) a requirement that the company, before making a disposal in a case in which the land in question is situated in a National Park or an area of outstanding natural beauty or special scientific interest, should do one or both of the following, that is to say—
  - (i) consult with DOE; and
  - (ii) enter into such agreements under Article 9 of the [Nature Conservation and Amenity Land \(Northern Ireland\) Order 1985 \(NI 1\)](#) or Article 34 of the [Environment](#)

(Northern Ireland) Order 2002 (NI 7) (management agreements) or such covenants under paragraph (6) as the Department may determine;

- (d) provision requiring determinations under or for the purposes of the consent or authorisation to be made, in such cases as are mentioned in sub-paragraph (c), either by DOE or only after consultation with DOE.

(5) A consent or authorisation shall not be given on any such condition as is mentioned in paragraph (4)(a) except where the Department is satisfied that the condition will have effect in relation only to—

- (a) land which was acquired by the relevant undertaker in question, or any predecessor of that undertaker, either compulsorily or at a time when the undertaker or that predecessor was authorised to acquire it compulsorily; or
- (b) land situated in a National Park or an area of outstanding natural beauty or special scientific interest.

(6) Where a company holding an appointment under Chapter I of Part III is proposing, in such a case as is mentioned in paragraph (4)(c), to dispose of any of its protected land, it may enter into a covenant with the Department by virtue of which it accepts obligations with respect to—

- (a) the freedom of access to the land that is to be afforded to members of the public or to persons of any description; or
- (b) the use or management of the land;

and a covenant under this paragraph shall bind all persons deriving title from or under that company and shall be enforceable by the Department accordingly.

(7) Article 8 shall have effect for the purposes of this Article as if every proposal which—

- (a) is made by a company holding an appointment as a relevant undertaker with respect to land in a National Park or an area of outstanding natural beauty or special scientific interest; and
- (b) is a proposal for which the Department's consent or authorisation is required under this Article,

were a proposal relating to the functions of such an undertaker.

(8) In this Article—

“area of outstanding natural beauty or special scientific interest” means an area which—

- (a) is for the time being designated as an area of outstanding natural beauty under Article 14 of the [Nature Conservation and Amenity Lands \(Northern Ireland\) Order 1985 \(NI 1\)](#); or
- (b) is an area in relation to which a notification under Article 28 of the [Environment \(Northern Ireland\) Order 2002 \(NI 7\)](#) (areas of special scientific interest) for the time being has effect;

“National Park” means an area designated as a National Park under Article 12 of the [Nature Conservation and Amenity Lands \(Northern Ireland\) Order 1985 \(NI 1\)](#).

### **Byelaws with respect to undertakers' waterways and land**

**218.**—(1) Every relevant undertaker shall have power to make such byelaws as are mentioned in paragraph (2) with respect to any waterway owned or managed by that body and with respect to any land held or managed with the waterway.

(2) The byelaws referred to in paragraph (1) in relation to any waterway or to any land held or managed with any such waterway are byelaws for any of the following purposes, that is to say—

- (a) the preservation of order on or in any such waterway or land;

- (b) the prevention of damage to anything on or in any such waterway or land or to any such land;
  - (c) securing that persons resorting to any such waterway or land so behave as to avoid undue interference with the enjoyment of the waterway or land by others.
- (3) Without prejudice to the generality of any of the sub-paragraphs of paragraph (2), the byelaws mentioned in that paragraph include byelaws—
- (a) regulating sailing, boating, bathing and fishing and other forms of recreation;
  - (b) prohibiting the use of the waterway in question by boats which are not for the time being registered, in such manner as may be required by the byelaws, with the undertaker making the byelaws;
  - (c) requiring the provision of such sanitary appliances as may be necessary for the purpose of preventing pollution;
  - (d) providing for a contravention of the byelaws to constitute a summary offence punishable, on summary conviction, by—
    - (i) a fine not exceeding level 5 on the standard scale or such smaller sum as may be specified in the byelaws; and
    - (ii) in the case of a continuing offence, an additional fine not exceeding one twentieth of level 5 on the standard scale for each day during which the offence continues after written notice of the offence is given by the undertaker making the byelaws;
  - (e) authorising the making of reasonable charges in respect of the registration of boats for the purposes of the byelaws.
- (4) Schedule 8 shall have effect with respect to byelaws under this Article.
- (5) Byelaws made under this Article shall cease to have effect at the end of the period of 10 years beginning with the day on which they were made; but the Department may by order make provision in relation to any particular byelaws for those byelaws to continue to have effect for such period after the time when they would otherwise cease to have effect as may be specified in the order.
- (6) In this Article—
- “boat” includes a vessel of any description, and “boating” shall be construed accordingly;
  - “waterway” means any lough, river, canal, reservoir or other waters which are, or can reasonably be rendered, suitable for sailing, boating, bathing or fishing.

### *Pipe-laying*

#### **Power to lay pipes in a street**

**219.**—(1) Subject to the following provisions of this Article, to Article 223(10) and to the provisions of Chapter III, every relevant undertaker shall, for the purpose of carrying out its functions, have power—

- (a) to lay a relevant pipe in, under or over any street and to keep that pipe there;
- (b) to inspect, maintain, adjust, repair or alter any relevant pipe which is in, under or over any street; and
- (c) to carry out any works requisite for, or incidental to, the purposes of any works falling within sub-paragraph (a) or (b), including for those purposes the following kinds of works, that is to say—
  - (i) breaking up or opening a street;
  - (ii) tunnelling or boring under a street;

- (iii) breaking up or opening a sewer, drain or tunnel;
- (iv) moving or removing earth and other materials.

(2) Without prejudice to the generality of paragraph (1)(c), every water undertaker shall have power to erect and keep in any street notices indicating the position of such underground accessories for its relevant pipes as may be used for—

- (a) controlling or maintaining the flow of water in those pipes; or
- (b) the purposes of fire-fighting.

(3) The power conferred by paragraph (2) shall include power to attach any such notice as is mentioned in that paragraph to any building, fence or other structure which is comprised in premises abutting on the street in question.

(4) A stopcock fitted to any service pipe in a street shall be situated as near as reasonably practicable to the boundary of the street; and a water undertaker shall consult with the Department before determining in accordance with this paragraph where to fit a stopcock in a road.

(5) Where a water undertaker exercises its powers under this Article for the purpose of carrying out works of maintenance, repair or renewal in relation to a service pipe belonging to a person other than the undertaker, the undertaker shall be entitled to recover from the occupier of the premises supplied by means of that pipe the expenses reasonably incurred by that undertaker in so exercising that power.

(6) Subject to Article 222(7), in this Article references to a relevant pipe shall be construed—

- (a) in relation to a water undertaker, as references to a water main (including a trunk main, resource main, discharge pipe or service pipe); and
- (b) in relation to a sewerage undertaker, as references to—
  - (i) any sewer or disposal main; or
  - (ii) in relation to the exercise of a power to lay a pipe under sub-paragraph (a) of paragraph (1) or a power related to that power under sub-paragraph (c) of that paragraph, any lateral drain which the undertaker is to lay by virtue of Article 154 or 158; or
  - (iii) in relation to the exercise of any other power under paragraph (1), any lateral drain which belongs to or is vested for the time being in the undertaker.

(7) Paragraphs (8) and (10) apply where—

- (a) an appointment or variation has been made under Article 14 replacing a company as a relevant undertaker,
- (b) the appointment or variation relates only to parts of the area to which the company's appointment as relevant undertaker related, and
- (c) the conditions mentioned in paragraph (5) of that Article were required to be satisfied in relation to each of the premises in those parts served by that company.

(8) Where the company which has replaced the relevant undertaker has done so as water undertaker, in the application of this Article and Article 220 in relation to that company any pipe supplying, or intended to supply, any of the premises referred to in paragraph (7)(c) with a supply of water which exceeds, or is likely to exceed, 100 megalitres in any period of 12 months shall, for the purposes of paragraph (6), be deemed to be a water main.

(9) Where the Department makes regulations under Article 14(6) amending Article 14(5)(a) it shall by regulations make the corresponding amendment in paragraph (8).

(10) Where the company which has replaced the relevant undertaker has done so as sewerage undertaker, in the application of this Article and Article 220 in relation to that company any pipe

draining, or intended to drain, any of those premises shall, for the purposes of paragraph (6), be deemed to be a sewer.

### **Power to lay pipes in other land**

**220.**—(1) Subject to the following provisions of this Article, to Article 223(10) and to the provisions of Chapter III, every relevant undertaker shall, for the purpose of carrying out its functions, have power—

- (a) to lay a relevant pipe (whether above or below the surface) in any land which is not in, under or over a street and to keep that pipe there;
- (b) to inspect, maintain, adjust, repair or alter any relevant pipe which is in any such land;
- (c) to carry out any works requisite for, or incidental to, the purposes of any works falling within sub-paragraph (a) or (b).

(2) Nothing in paragraph (1) shall authorise a water undertaker to lay a service pipe in, on or over any land except where—

- (a) there is already a service pipe where that pipe is to be laid; or
- (b) the undertaker is required to lay the pipe in, on or over that land by virtue of any of paragraphs (3) to (5) of Article 80.

(3) The power conferred by virtue of sub-paragraph (b) of paragraph (1), and the power conferred in relation to that paragraph by virtue of sub-paragraph (c) of that paragraph shall be exercisable in relation to a service pipe irrespective of the person to whom the pipe belongs; but expenses incurred in exercising those powers in relation to any pipe shall be recoverable from the person to whom the pipe belongs only if and to the extent that that person has agreed to pay them.

(4) The powers conferred by this Article shall be exercisable only after reasonable notice of the proposed exercise of the power has been given to the owner and to the occupier of the land where the power is to be exercised.

(5) Subject to paragraph (6), in relation to any exercise of the powers conferred by this Article for the purpose of laying or altering a relevant pipe, the minimum period that is capable of constituting reasonable notice for the purposes of paragraph (4) shall be deemed—

- (a) where the power is exercised for the purpose of laying a relevant pipe otherwise than in substitution for an existing pipe of the same description, to be 3 months; and
- (b) where the power is exercised for the purpose of altering an existing pipe, to be 42 days.

(6) Paragraph (5) shall not apply in the case of any notice given with respect to the exercise of any power in an emergency or for the purpose of—

- (a) laying or altering a service pipe; or
- (b) complying with a duty imposed under Article 76 or 154.

(7) Subject to paragraph (2), in this Article “relevant pipe” has the same meaning as in Article 219 (reading references there to paragraph (1) as references to paragraph (1) of this Article).

### *Other works powers*

### **Power to carry out works and discharge surface water for sewerage purposes**

**221.**—(1) A sewerage undertaker may, by agreement with the owner or occupier of any premises, carry out at that person’s expense—

- (a) any work in connection with the construction, laying, alteration or repair of a sewer or drain which that person is entitled to carry out; or

(b) any work which the undertaker has required that person to carry out under Part VI; and for that purpose the undertaker shall have all such rights as that person would have.

(2) Sections 255 and 260 of the [Public Health \(Ireland\) Act 1878 \(c. 52\)](#) and section 7 of the Public Health and Local Government (Miscellaneous Provisions) Act (Northern Ireland) 1962 (which provide for the recovery of expenses incurred by a district council) shall apply in relation to the recovery by a sewerage undertaker of any sums under paragraph (1) as they apply in relation to the recovery of expenses under that Act by a district council.

(3) A sewerage undertaker may for the purposes of any of its functions discharge surface water into any available watercourse or harbour.

(4) Paragraphs 1 and 2 of Schedule 10 apply in relation to the power conferred by paragraph (3) as they apply in relation to a power to carry out works.

### **Power to deal with foul water and pollution**

**222.**—(1) Subject to the provisions of Chapter III, every relevant undertaker shall, for the purpose of carrying out its functions, have power—

- (a) to carry out in a street all such works as are requisite for securing that the water in any relevant waterworks is not polluted or otherwise contaminated; and
- (b) to carry out any works requisite for, or incidental to, the purposes of any works falling within sub-paragraph (a), including for those purposes the following kinds of works, that is to say—
  - (i) breaking up or opening a street;
  - (ii) tunnelling or boring under a street;
  - (iii) breaking up or opening a sewer, drain or tunnel;
  - (iv) moving or removing earth and other materials;

and the provisions of Article 219 shall, so far as applicable, have effect in relation to the powers conferred by this paragraph as they have effect in relation to the powers conferred by paragraph (1) of that Article.

(2) Subject to the provisions of Chapter III, every relevant undertaker shall, for the purpose of carrying out its functions, have power—

- (a) to carry out on any land which is not in, under or over a street all such works as are requisite for securing that the water in any relevant waterworks is not polluted or otherwise contaminated; and
- (b) to carry out any works requisite for, or incidental to, the purposes of any works falling within sub-paragraph (a);

and the provisions of Article 220 shall, so far as applicable, have effect in relation to the powers conferred by this paragraph as they have effect in relation to the powers conferred by paragraph (1) of that Article.

(3) Without prejudice to the powers conferred by paragraphs (1) and (2) but subject to the provisions of Chapter III, every water undertaker shall have power, on any land which belongs to that undertaker or over or in which that undertaker has acquired the necessary easements or rights, to construct and maintain drains, sewers, watercourses, catchpits and other works for the purpose—

- (a) of intercepting, treating or disposing of any foul water arising or flowing upon that land; or
- (b) of otherwise preventing the pollution—
  - (i) of any waters, whether on the surface or underground, which belong to any water undertaker or from which any water undertaker is authorised to take water;



- (ii) without prejudice to head (i), of any reservoir which belongs to or is operated by any water undertaker or which any water undertaker is proposing to acquire or construct for the purpose of being so operated; or
- (iii) of any underground strata from which any water undertaker is for the time being authorised to abstract water.

(4) Where any water undertaker is proposing to carry out any such works as are mentioned in paragraph (3) and the proposed works will affect any watercourse, the undertaker shall consult DOE before carrying out the works.

(5) Without prejudice to Articles 245 to 250, nothing in paragraph (3) shall authorise any water undertaker, without the consent of the navigation authority in question, to intercept or take any water which a navigation authority is authorised to take or use for the purposes of its undertaking.

(6) Any dispute as to whether any consent for the purposes of paragraph (5) is being unreasonably withheld shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

(7) In Article 219 the references to the laying of a relevant pipe shall include references—

- (a) to the laying of any drain or sewer for any of the purposes mentioned in paragraph (3) (a) and (b); and
- (b) to the construction of a watercourse for any of those purposes.

(8) In this Article—

“relevant waterworks” means any waterworks which contain water which is or may be used by a water undertaker for providing a supply of water to any premises; and

“waterworks” includes any water main, resource main, service pipe or discharge pipe and any spring, well, adit, borehole, service reservoir or tank.

### **Works in connection with metering**

**223.**—(1) Subject to the following provisions of this Article, to Article 208 and to the provisions of Chapter III, where—

- (a) paragraph (2) applies to a relevant undertaker in respect of any premises; and
- (b) there is either—
  - (i) a service pipe which is connected with a water undertaker’s water main and by which a supply of water is or could be provided to those premises or to any building in which those premises are contained; or
  - (ii) a drain or private sewer which connects those premises with a public sewer,the undertaker shall have power, in accordance with Article 233 or otherwise, to carry out any works specified in paragraph (4).

(2) This paragraph applies to a relevant undertaker in respect of any premises if—

- (a) the undertaker has fixed any charges in relation to any premises by reference to volume, or
- (b) the undertaker is entitled so to fix any charges because the person who is the consumer in relation to the premises for the purposes of Chapter I of Part VII has exercised his right to give—
  - (i) a measured charges notice under Article 204, or
  - (ii) any consent for the purposes of Article 205(2)(a)(ii),and has not revoked the measured charges notice or consent under Article 204, or

- (c) the undertaker has given notice of its intention of so fixing any charges—
  - (i) within the period specified in the notice, or
  - (ii) in a case where it is not for the time being entitled so to fix the charges, if and when it becomes entitled to do so.
- (3) The power under paragraph (1) to carry out works specified in paragraph (4) shall include power to carry out any such works in a street; and the power conferred by virtue of paragraph (1)(c) of Article 219 and paragraph (6) of that Article shall apply in relation to the power conferred by this paragraph as they apply in relation to the powers conferred by that Article.
- (4) The works mentioned in paragraphs (1) and (2) are, in relation to any premises—
  - (a) works consisting in the installation and connection of any meter for use in determining the amount of any charges which have been or may be fixed in relation to the premises;
  - (b) where the premises comprise a house which is one of two or more houses to which the supply of water is wholly or partly by the same service pipe, works consisting in the installation and connection, for any purpose connected with the installation or connection of such a meter, of a separate service pipe for that house;
  - (c) works for the purpose of maintaining, repairing, disconnecting or removing—
    - (i) any meter which has been installed for use in determining the amount of any charges which have been or may be fixed in relation to the premises; or
    - (ii) any pipes or apparatus installed in the course of any works specified in this Article;
  - (d) works consisting of the installation and connection of any meter for research purposes or for the purpose of maintaining, repairing disconnecting or removing any such meter;
  - (e) any other works appearing to the undertaker to be necessary or expedient for any purpose connected with the carrying out of any works specified in sub-paragraph (a), (b), (c) or (d) including the installation and connection of any pipes or other apparatus on the premises and the alteration or removal of any of the plumbing of the premises.
- (5) A notice given for the purposes of paragraph (2)(c) may relate to particular premises or to any description of premises and shall be given—
  - (a) by publishing the notice in the locality in which the premises to which it relates are situated in such a manner as the undertaker considers appropriate for bringing it to the attention of the persons likely to be affected by it; and
  - (b) by serving a copy of the notice on the Department.
- (6) Subject to paragraph (7), any works carried out by a water undertaker by virtue of the provisions of this Article shall be necessary works for the purposes of Chapter II of Part IV.
- (7) Nothing in this Article affects the operation of paragraph (4)(b) of Article 104 in a case where a water undertaker has, under Article 104, required the provision of a separate service pipe to any premises.
- (8) Part II of Schedule 4 shall apply to the powers conferred by this Article.
- (9) Any dispute between a relevant undertaker and any other person (including another such undertaker) as to the exercise of any power under this Article to carry out any works on any premises shall be referred to the arbitration of a single arbitrator appointed—
  - (a) by agreement between the undertaker and that person; or
  - (b) in default of agreement, by the Authority.
- (10) Without prejudice to paragraph (3), nothing in Article 219, 220 or 222 shall authorise the installation of any apparatus for measuring or showing the volume of water supplied to, or of effluent discharged from, any premises where that apparatus is to be used for the purpose only of determining

the amount of any charges fixed, or to be fixed, in relation to those premises wholly or partly by reference to the volume of that water or effluent.

### **Power to fit stopcocks**

**224.**—(1) Subject to paragraph (2) and without prejudice to Article 220, a water undertaker shall have power, at its own expense, to fit a stopcock to any service pipe by which a supply of water is or is to be provided to any premises by the undertaker, whether that pipe belongs to the undertaker or to any other person.

(2) A stopcock fitted in private premises by a water undertaker to any service pipe shall be situated as near as practicable to any street from which that pipe enters those premises.

### **Agreements for works with respect to water sources**

**225.**—(1) A water undertaker may enter into agreements under this Article with the owners and occupiers of any land, or with DARD, with respect to the carrying out and maintenance by any party to the agreement of such works as the undertaker considers necessary—

- (a) for the purpose of draining that land; or
- (b) for more effectually collecting, conveying or preserving the purity of any water which the undertaker is for the time being authorised to take.

(2) Before entering into an agreement under this Article with respect to the carrying out of works the carrying out of which would result in the discharge of any water into a watercourse otherwise than through public sewers, a water undertaker shall consult DOE and, if the watercourse is subject to the jurisdiction of a navigation authority, that authority.

(3) An agreement under this Article with the owner of any land which is expressed to be binding on and enforceable against the owner's successors in title to that land—

- (a) may be registered in the Statutory Charges Register; and
- (b) shall be so binding and enforceable unless it is void by reason of a failure so to register it.

### *Powers to discharge water*

### **Discharges for works purposes**

**226.**—(1) Subject to the following provisions of this Article and to Article 227, where any water undertaker—

- (a) is exercising or about to exercise any power conferred by Article 219, 220, 222 or 224 (other than the power conferred by Article 222(3)); or
- (b) is carrying out, or is about to carry out, the construction, alteration, repair, cleaning, or examination of any reservoir, well, borehole, or other work belonging to or used by that undertaker for the purposes of, or in connection with, the carrying out of any of its functions,

the undertaker may cause the water in any relevant pipe or in any such reservoir, well, borehole or other work to be discharged into any available watercourse.

(2) Nothing in this Article shall authorise any discharge which—

- (a) damages or injuriously affects the works or property of any railway undertaking or navigation authority; or
- (b) floods or damages any road.

(3) If any water undertaker fails to take all necessary steps to secure that any water discharged by it under this Article is as free as may be reasonably practicable from—

- (a) mud and silt;
- (b) solid, polluting, offensive or injurious substances; and
- (c) any substances prejudicial to fish or spawn, or to spawning beds or food of fish,

the undertaker shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(4) In this Article “relevant pipe” means any water main (including a trunk main), resource main, discharge pipe or service pipe.

### **Consents for certain discharges under Article 226**

**227.**—(1) Except in an emergency, no discharge through any pipe the diameter of which exceeds 300 millimetres shall be made under Article 226 except with the consent of each relevant department and of any navigation authority which carries out functions in relation to—

- (a) the part of the watercourse where the discharge is made; or
- (b) any part of that watercourse which is less than three miles downstream from the place of the discharge.

(2) Where a water undertaker makes an application for a consent for the purposes of this Article—

- (a) that application shall be accompanied or supplemented by all such information as a relevant department or the navigation authority may reasonably require; and
- (b) the undertaker shall serve a copy of the application, and of any consent given on that application, on every person who—

- (i) is registered with the undertaker in respect of any premises which are within three miles of the place where the discharge to which the application relates is proposed to be made and are not upstream from that place; and

- (ii) has not agreed in writing that he need not be served with such a copy;

but, subject to paragraph (4) and without prejudice to the effect (if any) of any other contravention of the requirements of this Article in relation to such an application, a failure to provide information in pursuance of the obligation to supplement such an application shall not invalidate the application.

(3) Subject to paragraph (4), an application for a consent for the purposes of this Article shall be determined—

- (a) in the case of an application with respect to a particular discharge, before the end of the period of 7 days beginning with the day after the application is made; and
- (b) in any other case, before the end of the period of 3 months beginning with that day;

and, subject to that paragraph, where an application for any consent is required to be determined within the period specified in sub-paragraph (a) and is not so determined, the consent applied for shall be deemed to have been given unconditionally.

(4) Where—

- (a) an undertaker which has made an application for a consent for the purposes of this Article has failed to comply with its obligation under paragraph (2)(a) to supplement that application with information required by a relevant department or the navigation authority; and
- (b) that requirement was made by the relevant department or the navigation authority at such a time before the end of the period within which that department or authority is required

to determine the application as gave the undertaker a reasonable opportunity to provide the required information within that period,

that department or authority may delay its determination of the application until a reasonable time after the required information is provided.

(5) A consent for the purposes of this Article may relate to a particular discharge or to discharges of a particular description and may be made subject to such reasonable conditions as may be specified by the body giving it; but a consent for those purposes shall not be unreasonably withheld.

(6) Any dispute as to whether a consent for the purposes of this Article should be given or withheld, or as to whether the conditions to which any such consent is made subject are reasonable, shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

(7) Where any discharge under Article 226 is made in an emergency without the consent which, if there were no emergency, would be required by virtue of this Article, the undertaker which made the discharge shall, as soon as practicable after making the discharge, serve a notice which—

- (a) states that the discharge has been made; and
- (b) gives such particulars of the discharge and of the emergency as the persons served with the notice might reasonably require,

on every person on whom that undertaker would have been required to serve the application for that consent or any copy of that application.

(8) If any water undertaker contravenes, without reasonable excuse, any of the requirements of this Article or any condition of a consent given for the purposes of this Article, it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(9) This Article does not apply in relation to a discharge which—

- (a) is being made immediately before the transfer date; and
- (b) is (disregarding this Article) authorised by Article 226.

(10) For the purposes of this Article the relevant departments are DARD, DOE and DCAL.

### *Compulsory works orders*

#### **Compulsory works orders**

**228.**—(1) Where a water undertaker is proposing, for the purposes of, or in connection with, the carrying out of any of its functions—

- (a) to carry out any engineering or building operations; or
- (b) to discharge water into any inland waters or underground strata,

the undertaker may apply to the Department for an order under this Article (“a compulsory works order”).

(2) Subject to the following provisions of this Article, the Department may, on an application under paragraph (1), by order—

- (a) confer such compulsory powers; and
- (b) grant such authority,

as it considers necessary or expedient for the purpose of enabling any engineering or building operations or discharges of water to be carried out or made for the purposes of, or in connection with, the carrying out of the functions with respect to which the application was made.

(3) Schedule 9 shall have effect with respect to applications for compulsory works orders and with respect to such orders.

- (4) Subject to the provisions of Schedule 9, a compulsory works order may—
- (a) without prejudice to Article 216, confer power to acquire compulsorily any land, including power to acquire land by the creation of new rights and interests;
  - (b) apply for the purposes of the order, either with or without modifications, any of the relevant provisions of this Part which do not apply for those purposes apart from by virtue of this sub-paragraph;
  - (c) make any authority granted by the order subject to such conditions as may be specified in the order;
  - (d) amend or repeal any local statutory provision;
  - (e) contain such supplemental, consequential and transitional provision as the Department considers appropriate.

(5) Nothing in any compulsory works order shall exempt any water undertaker from any restriction imposed by the Water Order in relation to the abstraction or impounding of water.

(6) A compulsory works order may grant authority for discharges of water by a water undertaker where the undertaker has no power to take water, or to require discharges to be made, from the inland waters or other source from which the discharges authorised by the order are intended to be made; but nothing in so much of any such order as grants authority for any discharges of water shall have the effect of conferring any such power.

(7) In this Article the reference to the relevant provisions of this Part is a reference to the provisions of this Part except Articles 233 and 235, the provisions of Chapter II and any provision of this Part which is one of the relevant sewerage provisions.

*Entry to land, etc. by relevant undertakers*

**Entry for works purposes**

**229.**—(1) Any person designated in writing for the purpose by a relevant undertaker may enter any premises for any of the purposes specified in paragraph (2).

(2) The purposes mentioned in paragraph (1) are—

- (a) the carrying out of any survey or tests for the purpose of determining—
  - (i) whether it is appropriate and practicable for the undertaker to exercise any relevant works power; or
  - (ii) how any such power should be exercised; or
- (b) the exercise of any such power.

(3) The power, by virtue of paragraph (1), of a person designated by a relevant undertaker to enter any premises for the purposes of carrying out any survey or tests shall include power—

- (a) to carry out experimental borings or other works for the purpose of ascertaining the nature of the sub-soil; and
- (b) to take away and analyse such samples of water or effluent or of any land or articles as the undertaker—
  - (i) considers necessary for the purpose of determining either of the matters mentioned in paragraph (2)(a); and
  - (ii) has authorised that person to take away and analyse.

(4) Part II of Schedule 4 shall apply to the rights and powers conferred by this Article.

(5) In this Article “relevant works power” means any power conferred by any of the provisions of Articles 215, 219, 220, 221(3), 222, 224 and 226, other than Article 222(3).

### **Power to carry out surveys and search for water**

**230.**—(1) Without prejudice to the rights and powers conferred by Article 229, any person designated in writing under this Article by a water undertaker may enter any premises for any of the purposes specified in paragraph (2).

(2) The purposes mentioned in paragraph (1) are the carrying out of any survey or tests for the purpose of determining—

- (a) whether it would be appropriate for the undertaker to acquire any land for purposes connected with the carrying out of its functions; or
- (b) whether it would be appropriate for the undertaker to apply for a compulsory works order under Article 228 and what compulsory powers it would be appropriate to apply for under that Article.

(3) The power by virtue of paragraph (1) of a person designated under this Article to enter any premises for the purpose of carrying out any survey or tests shall include power—

- (a) to carry out experimental borings or other works for the purpose of ascertaining the nature of the sub-soil, the presence of underground water in the sub-soil or the quantity or quality of any such water;
- (b) to install and keep monitoring or other apparatus on the premises for the purpose of obtaining the information on which any such determination as is mentioned in paragraph (2) may be made; and
- (c) to take away and analyse such samples of water or of any land or articles as the undertaker considers necessary for any of the purposes so mentioned and has authorised that person to take away and analyse.

(4) Part II of Schedule 4 shall apply to the rights and powers conferred by this Article.

### **Entry etc. for other purposes**

**231.**—(1) Any person designated in writing for the purpose by a water undertaker may enter any premises for any of the following purposes, that is to say—

- (a) the carrying out of any survey or tests for the purpose of determining—
    - (i) whether it is appropriate and practicable for the undertaker to exercise any power under any provision of Part IV to disconnect any pipe or cut off any supply of water to any premises or to carry out any works which it is authorised to carry out under Article 104(5), 106(3) or 115; or
    - (ii) how any such power should be exercised;
  - (b) the exercise of any such power;
  - (c) the monitoring and recording of—
    - (i) whether water supplied to any premises for domestic or food production purposes is wholesome at the time of supply; or
    - (ii) the quality of the water from any source, or combination of sources, which is or is to be used for supplying water to any premises for those purposes,
- and the carrying out of any tests for that purpose.

(2) Any person designated for the purpose—

- (a) by any water undertaker within whose area any waterworks are situated; or
- (b) by any water undertaker which takes water from any waterworks,

shall, on producing some duly authenticated document showing his authority, have a right at all reasonable hours to enter any premises for the purpose of ascertaining whether there is, or has been, any contravention of Article 112 in relation to those waterworks.

(3) Any person designated in writing for the purpose by a water undertaker may—

(a) enter any premises for the purpose of—

- (i) ascertaining whether any provision contained in or made or having effect under this Order with respect to any water fittings or with respect to the waste or misuse or undue consumption of water is being, or has been, contravened;
- (ii) determining whether, and if so in what manner, any power or duty conferred or imposed on any person by regulations under Article 114 should be exercised or performed; or
- (iii) exercising any such power or performing any such duty; or

(b) carry out such inspections, measurements and tests on premises entered by that person or on water fittings or other articles found on any such premises, and take away such samples of water or of any land and such water fittings and other articles, as that person has been authorised to carry out or take away in accordance with regulations under that Article.

(4) During any period when a prohibition or restriction under Article 116 is in force, any person designated for the purpose by the water undertaker which imposed the prohibition or restriction shall, on producing some duly authenticated document showing his authority, have a right at all reasonable hours to enter any premises to which the prohibition or restriction applies for the purpose of ascertaining whether there is, or has been, any contravention of the prohibition or restriction.

(5) The power by virtue of paragraph (1) of a person designated by a water undertaker to enter any premises for the purpose of carrying out any survey or tests shall include power to take away such samples of water or effluent or of any land or articles as the undertaker—

- (a) considers necessary for the purpose of determining any of the matters mentioned in sub-paragraph (a) or (c) of that paragraph; and
- (b) has authorised that person to carry out or take away.

(6) Expressions used in this Article and in any provision of Part IV in relation to which this Article has effect shall have the same meaning in this Article as in that provision; and, without prejudice to the generality of this provision, paragraphs (2) and (3) of Article 108 and the definitions of “food production purposes” and “wholesome” in Article 136(1) shall apply for the purposes of any power conferred by virtue of paragraph (1)(c)(i) as they apply for the purposes of that Article.

(7) Part I of Schedule 4 shall apply to the rights of entry conferred by paragraphs (2) and (4); and Part II of that Schedule shall apply to the rights and powers conferred by the other provisions of this Article.

(8) The provisions of this Article shall be without prejudice to the other rights and powers conferred by this Part.

### **Entry for sewerage purposes**

**232.**—(1) Any person designated in writing for the purpose by a sewerage undertaker shall, on producing any duly authenticated document showing his authority, have a right to enter any premises at all reasonable hours—

- (a) for the purpose of ascertaining whether there is or has been, on or in connection with the premises, any contravention of any of the relevant sewerage provisions which it is the function of the undertaker to enforce;



- (b) for the purpose of ascertaining whether or not circumstances exist which would authorise or require the undertaker to take any action or carry out any works under any of the relevant sewerage provisions;
- (c) for the purpose of taking action or carrying out any works authorised by or under any of the relevant sewerage provisions to be taken or carried out by the undertaker;
- (d) generally for the purpose of carrying out the undertaker's functions under the relevant sewerage provisions.

(2) Part I of Schedule 4 shall apply to the right of entry conferred by paragraph (1).

(3) Any person designated by a sewerage undertaker under paragraph (1) for the purpose of exercising any power under this Article for the purposes of Chapter III of Part VI may, on any occasion on which he so exercises that power in relation to any premises, obtain and take away any sample of any trade effluent or any other liquid or substance which is passing (either directly or through a drain or private sewer) from those premises into any of the undertaker's public sewers.

(4) The power by virtue of paragraph (1) of a person designated under that paragraph to enter any premises shall include power to install and keep monitoring or other apparatus on the premises for the purpose of obtaining the information on which any such matter as is mentioned in sub-paragraph (a) or (b) of that paragraph may be ascertained.

(5) In this Article "trade effluent" has the same meanings as in Chapter III of Part VI; and, accordingly, Article 198 shall have effect for the purposes of this Article as it has effect for the purposes of that Chapter.

### **Entry for metering purposes**

**233.**—(1) Where the conditions set out in Article 223(1) are satisfied in relation to any premises, any person designated in writing for the purpose by the relevant undertaker in question may enter those premises, or any land occupied with those premises, for any of the purposes specified in paragraph (2).

(2) The purposes mentioned in paragraph (1) are—

- (a) the carrying out of any survey or tests for the purpose of determining—
  - (i) whether the carrying out of any works by virtue of sub-paragraph (a) or (b) of paragraph (4) of Article 223 is practicable;
  - (ii) whether it is necessary or expedient for any purpose connected with the carrying out of any works by virtue of either of those sub-paragraphs for any other works to be carried out; or
  - (iii) how any works specified in that paragraph should be carried out;
- (b) the carrying out of any works so specified;
- (c) the inspection, examination or testing of any meter which is on those premises or of any pipes or apparatus installed in the course of any works which were carried out for any purpose that is connected with the installation, connection, testing, maintenance or repair of any such meter;
- (d) the ascertainment from any meter of the volume of water supplied to, or of effluent discharged from, those premises.

(3) Part II of Schedule 4 shall apply in relation to the rights and powers conferred by the preceding provisions of this Article.

(4) Where any meter or other recording apparatus is provided in any premises in pursuance of Chapter III of Part VI for the purpose of assessing any charge, a sewerage undertaker may (instead of exercising its powers under this Article) for the purpose of reading that meter or apparatus exercise

the power conferred by Article 232 as if that purpose were included in the purposes mentioned in paragraph (1) of that Article.

### **Regulations as to taking of, and dealing with, samples**

**234.** The Department may by regulations make provision as to the procedure to be followed in connection with the taking of, and dealing with, samples under Articles 229 to 232.

### **Impersonation of persons entitled to entry**

**235.**—(1) A person who, without having been designated or authorised for the purpose by a relevant undertaker, purports to be entitled to enter any premises in exercise of a power exercisable in pursuance of any such designation or authorisation shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(2) For the purposes of this Article it shall be immaterial, where a person purports to be entitled to enter any premises, that the power which that person purports to be entitled to exercise does not exist or would not be exercisable even if that person had been designated or authorised by a relevant undertaker.

## **Chapter ii**

### **Protection of Undertakers' Works, Apparatus, etc.**

#### *Protection of apparatus in general*

### **Offences of interference with works, etc.**

**236.**—(1) Subject to paragraphs (3) and (4), if any person without the consent of the water undertaker—

- (a) intentionally or recklessly interferes with—
  - (i) any resource main, water main or other pipe vested in any water undertaker; or
  - (ii) any structure, installation or apparatus belonging to any water undertaker; or
- (b) by any act or omission negligently interferes with any such main or other pipe or with any such structure, installation or apparatus so as to damage it or so as to have an effect on its use or operation,

that person shall be guilty of an offence.

(2) Subject to paragraph (3), if any person without the consent of the sewerage undertaker—

- (a) intentionally or recklessly interferes with—
  - (i) any sewer, lateral drain or other pipe vested in any sewerage undertaker; or
  - (ii) any structure, installation or apparatus belonging to any sewerage undertaker; or
- (b) by any act or omission negligently interferes with any such sewer, lateral drain or other pipe or with any such structure, installation or apparatus so as to damage it or so as to have an effect on its use or operation,

that person shall be guilty of an offence.

(3) A person shall not be guilty of an offence under paragraph (1) or (2) by reason of anything done in an emergency to prevent loss or damage to persons or property.

(4) A person shall not be guilty of an offence under paragraph (1) by reason of his opening or closing the stopcock fitted to a service pipe by means of which water is supplied to any premises by a water undertaker if—

- (a) he has obtained the consent of every consumer whose supply is affected by the opening or closing of that stopcock or, as the case may be, of every other consumer whose supply is so affected; and
  - (b) in the case of opening a stopcock, the stopcock was closed otherwise than by the undertaker.
- (5) Any person who, without the consent of the water undertaker—
- (a) attaches any pipe or apparatus—
    - (i) to any resource main, water main or other pipe vested in a water undertaker; or
    - (ii) to any service pipe which does not belong to such an undertaker but which is a pipe by means of which water is supplied by such an undertaker to any premises;
  - (b) makes any alteration in a service pipe by means of which water is so supplied, or in any apparatus attached to any such pipe; or
  - (c) subject to paragraph (7), uses any pipe or apparatus which has been attached or altered in contravention of this Article,
- shall be guilty of an offence.
- (6) Any person who, without the consent of the sewerage undertaker—
- (a) attaches any pipe or apparatus to any sewer, lateral drain or other pipe vested in a sewerage undertaker; or
  - (b) makes any alteration in a sewer, lateral drain or other pipe vested in the undertaker, or in any apparatus attached to any such sewer lateral drain or other pipe; or
  - (c) subject to paragraph (7), uses any pipe or apparatus which has been attached or altered in contravention of this Article,
- shall be guilty of an offence.
- (7) In proceedings against any person for an offence by virtue of paragraph (5)(c) or (6)(c) it shall be a defence for that person to show that he did not know, and had no grounds for suspecting, that the pipe or apparatus in question had been attached or altered as mentioned in the paragraph in question.
- (8) Any person who intentionally, recklessly or negligently damages or permits to be damaged any water fitting belonging to a relevant undertaker shall be guilty of an offence.
- (9) Any person who, without the consent of a relevant undertaker, causes any building to be erected over or in the vicinity of a pipe vested in that undertaker so as to have an effect on the use or operation of the pipe shall be guilty of an offence.
- (10) A person guilty of an offence under this Article shall be liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.
- (11) An offence under this Article shall constitute a breach of a duty owed to the relevant undertaker in question; and any such breach of duty which causes the undertaker to sustain loss or damage shall be actionable at the suit of the undertaker.
- (12) The amount recoverable by virtue of paragraph (11) from a person who has committed an offence under paragraph (5) shall include such amount as may be reasonable in respect of any water wasted, misused or improperly consumed in consequence of the commission of the offence.
- (13) A relevant undertaker may—
- (a) do all such work as is necessary for repairing any damage done in contravention of paragraph (1), (2) or (9); and
  - (b) recover the expenses reasonably incurred by the undertaker in doing so from the offender summarily as a civil debt.

(14) In this Article “consumer” and “water fitting” have the same meanings as in Part IV; and in paragraphs (1) and (2) the references to apparatus include water fittings but do not include references to any meter which is used by a water undertaker or, as the case may be, a sewerage undertaker for the purpose of determining the amount of any charges which have been fixed by that undertaker by reference to volume.

### *Protection of meters*

#### **Offence of tampering with a meter**

**237.**—(1) If any person—

- (a) so interferes with a meter used by any relevant undertaker in determining the amount of any charges fixed in relation to any premises as intentionally or recklessly to prevent the meter from showing, or from accurately showing, the volume of water supplied to, or of effluent discharged from, those premises; or
- (b) carries out any works which he knows are likely to affect the operation of such a meter or which require the disconnection of such a meter,

he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(2) A person shall not be guilty of an offence under this Article in respect of anything done by him with the consent under Article 238 of the relevant undertaker which uses the meter or (if the meter is used by more than one relevant undertaker) each of those undertakers.

#### **Consent for the purposes of Article 237**

**238.**—(1) Where an application is made to any relevant undertaker for a consent for the purposes of Article 237, the undertaker—

- (a) shall give notice of its decision with respect to the application as soon as reasonably practicable after receiving it; and
- (b) subject to paragraph (2), may make it a condition of giving any consent that the undertaker itself should carry out so much of any works to which the application relates as is specified in the notice of its decision.

(2) On such an application a relevant undertaker shall not refuse its consent, or impose any such condition as is mentioned in paragraph (1)(b), unless it is reasonable to do so.

(3) Where any relevant undertaker has given a notice to any person imposing any such condition as is mentioned in paragraph (1)(b), the undertaker—

- (a) shall carry out those works as soon as reasonably practicable after giving the notice; and
- (b) may recover from that person any expenses reasonably incurred by it in doing so.

(4) Any dispute between a relevant undertaker and any other person (including another such undertaker)—

- (a) as to whether the undertaker or that other person should bear any expenses under paragraph (3); or
- (b) as to the amount of any expenses to be borne by any person under that paragraph,

shall be referred to the arbitration of a single arbitrator appointed by agreement between the undertaker and that person or, in default of agreement, by the Authority.

(5) Paragraph (3) shall not apply where the person who was given the notice notifies the undertaker that the carrying out of the works to which the condition relates is no longer required.

### **Financial obligations with respect to any interference with a meter**

**239.**—(1) A relevant undertaker which carries out any works made necessary by the commission of an offence under Article 237 shall be entitled to recover any expenses reasonably incurred in carrying out those works from the person who committed the offence.

(2) Any person who sustains any loss or damage in consequence of any failure by any relevant undertaker—

- (a) to comply with any obligation imposed on it by Article 238; or
- (b) to exercise reasonable care in the performance of the duty imposed by paragraph (3)(a) of that Article,

shall be entitled to recover compensation from the undertaker.

(3) Any dispute between a relevant undertaker and any other person (including another such undertaker)—

- (a) as to whether the undertaker or that other person should bear any expenses under this Article;
- (b) as to whether the undertaker should pay any compensation under this Article; or
- (c) as to the amount of any expenses to be borne by any person under this Article or as to the amount of any such compensation,

shall be referred to the arbitration of a single arbitrator appointed by agreement between the undertaker and that person or, in default of agreement, by the Authority.

### **Obstruction of works, etc.**

**240.**—(1) A person who intentionally obstructs any person acting in the execution of—

- (a) any provision of Chapter II or III of Part IV or Article 225, 228, 230, 231 or 250; or
- (b) any of the relevant sewerage provisions,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(2) If on an application made by the owner of any premises, it appears to the county court that the occupier of those premises is preventing the owner from carrying out any work which he is required or authorised to carry out under any of the provisions mentioned in paragraph (1)(a) or (b), the court may authorise the owner to enter the premises and execute the work.

## **CHAPTER III**

### **SUPPLEMENTAL PROVISIONS WITH RESPECT TO UNDERTAKERS' POWERS**

#### *Vesting of works in undertaker*

### **Vesting of works in undertaker**

**241.**—(1) Subject to paragraph (3) and to any provision to the contrary contained in an agreement between the relevant undertaker and the person in whom an interest in the pipe or works is or is to be vested—

- (a) every relevant pipe which has been laid, in exercise of any power conferred by this Part or otherwise, by a relevant undertaker; and
- (b) every water treatment works or waste water treatment works constructed by a relevant undertaker,

shall vest in the undertaker which laid it or, as the case may be, the undertaker which constructed them.

(2) In addition—

- (a) every water main and so much of each service pipe with respect to which a declaration of vesting made by a water undertaker under Chapter II of Part IV takes effect shall also vest in that undertaker; and
- (b) every sewer, lateral drain or waste water treatment works with respect to which a declaration of vesting made by a sewerage undertaker under Chapter II of Part VI takes effect shall also vest in that undertaker.

(3) Paragraph (1) shall not apply—

- (a) to a service pipe laid in a street other than the street in which the water main with which it connects is situated;
- (b) to a service pipe laid otherwise than in a street where that pipe is laid—
  - (i) in pursuance of the duty imposed by virtue of Article 80(4); or
  - (ii) in substitution for a service pipe belonging to a person other than the person who lays the replacement pipe.

(4) If any water fittings let for hire by a water undertaker are suitably marked, they—

- (a) shall continue to be the property of and removable by the undertaker, even if they are fixed to some part of the premises in which they are situated or are laid in the soil under any premises; and
- (b) shall not be subject to distress or to the landlord's remedy for rent or be liable to be taken in execution under any process of any court or in any proceedings in bankruptcy against a person in whose possession they are;

but nothing in this paragraph affects the valuation for rating of any rateable hereditament.

(5) The preceding provisions of this Article are without prejudice, in relation to any company appointed to be a relevant undertaker, to the vesting of anything in that company by virtue of—

- (a) any transfer scheme under Article 270 or Schedule 1;
- (b) the exercise by any relevant undertaker of any power to acquire property by agreement or compulsorily.

(6) In this Article—

“relevant pipe”—

- (a) in relation to a water undertaker, means any water main (including a trunk main), resource main, discharge pipe or service pipe; and
  - (b) in relation to a sewerage undertaker, means any sewer, lateral drain or disposal main; and
- “water fittings” has the same meaning as in Part IV.

(7) For the purposes of this Article water fittings let on hire by a water undertaker shall be treated as suitably marked for the purposes of this Article if and only if they bear either such a distinguishing metal plate affixed to them or such a distinguishing brand or other mark conspicuously impressed or made on them as sufficiently indicates the undertaker as the actual owner of the fittings.

### **Compensation for loss or damage caused by works etc.**

**242.**—(1) In executing any works under this Part a relevant undertaker shall—

- (a) cause as little detriment and inconvenience and do as little damage as possible; and

- (b) make good, or pay compensation for, any loss or damage caused by, or in consequence of, the execution of the works.
- (2) Compensation shall not be payable to any person under paragraph (1)(b) in relation to any matter as to which he has been in default.
- (3) Any question arising as to—
  - (a) the entitlement of any person to compensation under this Article; or
  - (b) the amount payable by way of that compensation,shall, in default of agreement, be referred to and determined by the Lands Tribunal; and Articles 4 and 5 of the [Land Compensation \(Northern Ireland\) Order 1982 \(NI 9\)](#) shall apply with appropriate modifications to such determination.
- (4) Compensation under this Article in respect of damage to land shall not be payable to any person from whom any land has been acquired by the undertaker under this Order and to whom any compensation is payable under Article 8(1) to (3) of the [Land Compensation \(Northern Ireland\) Order 1982 \(NI 9\)](#) by the undertaker in respect of injurious affection of the first-mentioned land.
- (5) In assessing compensation under this Article in respect of damage to land regard shall be had to any benefit which the person entitled to the compensation may derive from any works which have been or are to be carried out, or any use of land, by the person causing the damage.
- (6) In assessing compensation under this Article in respect of damage to land regard shall also be had to any undertaking given by the person causing the damage—
  - (a) to make alterations or additions to any works;
  - (b) to construct additional works;
  - (c) to vary or abandon any use of land;
  - (d) to abandon part of any land acquired or any ancillary rights; or
  - (e) to grant other lands or easements.
- (7) Where for the purpose of assessing the amount of any compensation payable under this Article the value of any land is required to be determined, that value shall be determined in accordance with rules (2) to (4) of Article 6(1) of the [Land Compensation \(Northern Ireland\) Order 1982 \(NI 9\)](#).

### **Complaints with respect to the exercise of works powers on private land, etc**

**243.**—(1) Subject to paragraph (2), it shall be the duty of the Authority to investigate any complaint made or referred to it with respect to the exercise by a relevant undertaker of any powers conferred on that undertaker by or under Article 220, 221 (3) or 222(2).

(2) The Authority shall not be required to investigate any such complaint as is mentioned in paragraph (1) if—

- (a) the complaint appears to the Authority to be vexatious or frivolous;
- (b) the Authority is not satisfied that the complaint has been brought by the complainant to the attention of the relevant undertaker in question and that that undertaker has been given a reasonable opportunity of investigating and dealing with it;
- (c) the complaint was first made to the Authority or the Council more than 12 months, or such longer period as the Authority may for special reasons allow, after the matters to which the complaint relates first came to the notice of the complainant; or
- (d) in the case of a complaint referred to the Council under Article 55, it appears to the Authority that the complaint is likely to be resolved under that Article.

(3) Where the Authority, in pursuance of its duty under this Article, investigates a complaint with respect to the exercise of any powers by a relevant undertaker—

- (a) it shall be the duty of that undertaker to provide the Authority with all such information and assistance as it may reasonably require for the purposes of its investigation; and
  - (b) it shall be the duty of the Authority, before giving any direction under paragraph (4), to consider any representations made to it by the complainant or by that undertaker with respect to the subject-matter of the complaint.
- (4) If on a complaint under paragraph (1) with respect to the exercise of any powers by a relevant undertaker, the Authority is satisfied that that undertaker—
- (a) has failed adequately to consult the complainant, before and in the course of exercising those powers, about the manner in which they are exercised; or
  - (b) by acting unreasonably in the manner of its exercise of those powers, has caused the complainant to sustain loss or damage or to be subjected to inconvenience,
- the Authority may direct the undertaker to pay to the complainant an amount, not exceeding £5,000, in respect of that failure, loss, damage or inconvenience.
- (5) The Authority shall not under paragraph (4) direct a relevant undertaker to pay any amount to a complainant in respect of any loss, damage or inconvenience for which compensation is recoverable under any other statutory provision except in so far as it appears to the Authority appropriate to do so by reason of any failure of the amount of any such compensation to reflect the fact that it was not reasonable for the undertaker to cause the complainant to sustain the loss or damage or to be subjected to the inconvenience.
- (6) The duties of a relevant undertaker by virtue of paragraph (3)(a) shall be enforceable under Article 30 by the Authority.
- (7) A person to whom any amount is required, in pursuance of a direction under paragraph (4), to be paid by a relevant undertaker shall be entitled to recover that amount from that undertaker by virtue of this Article.
- (8) The Department may by regulations substitute a different amount for the amount for the time being specified in paragraph (4).

### **Codes of practice with respect to work on private land**

**244.**—(1) For the purposes of Article 243 it shall be the duty of every company holding an appointment under Chapter I of Part III as a relevant undertaker—

- (a) as soon as reasonably practicable after its appointment takes effect, to submit to the Department for its approval a code of practice with respect to the exercise by the undertaker of any powers conferred by or under Article 220 or 222(2); and
- (b) if required to do so by the Department at any subsequent time, to submit proposed modifications of that code to the Department for its approval.

(2) The Department, if it considers it appropriate to do so for the purpose of promoting what appear to it to be desirable practices with respect to the exercise, by any company holding an appointment under Chapter I of Part III as a relevant undertaker, of any powers conferred by or under Article 220 or 222(2), may at any time by order, in relation to that company—

- (a) approve any code of practice with respect to the exercise of those powers which has been submitted to it (whether or not under paragraph (1)) by that company for its approval;
- (b) approve any modifications of such a code which have been so submitted; or
- (c) withdraw its approval for any such code or modification.

(3) A contravention of a code of practice as for the time being approved under this Article in relation to a company shall not—

- (a) affect the powers conferred on that company as a relevant undertaker by this Part;



- (b) of itself entitle any person to be paid any amount under paragraph (4) of Article 243; or
- (c) give rise to any criminal or civil liability;

but the Authority shall take into account whether there has been any such contravention in determining whether to give a direction under that paragraph to that company and in determining the amount to which any such direction relates.

(4) The Department shall not make an order under paragraph (2) unless it has first consulted all such persons as the Department considers it appropriate to consult.

(5) The duties of a relevant undertaker under paragraph (1) shall be enforceable under Article 30 by the Department.

### **Protection for particular undertakings**

**245.** Schedule 10 shall have effect for the protection of particular undertakings in connection with the carrying out of works and other activities by relevant undertakers.

### **Power of certain undertakers to alter public sewers, etc.**

**246.**—(1) DARD, the Civil Aviation Authority or any harbour authority, railway undertaking or airport operator may, after giving reasonable notice to the sewerage undertaker concerned, at its own expense and on substituting an equivalent, take up, divert or alter the level of any sewers, drains, culverts or other pipes which—

- (a) are vested in the undertaker; and
- (b) pass under or interfere with, or interfere with the alteration or improvement of, as the case may be—
  - (i) any watercourse or other works vested in or under the control of DARD for the purposes of its functions under the Drainage Order;
  - (ii) any property of the Civil Aviation Authority;
  - (iii) any river or works forming part of the undertaking of the harbour authority;
  - (iv) the railway of the railway undertaking; or
  - (v) the airport in question.

(2) In paragraph (1) “an equivalent”, in relation to any sewers, drains, culverts or pipes means other sewers, drains, culverts or pipes which will in the opinion of the sewerage undertaker concerned—

- (a) be equally effectual; and
- (b) entail no additional expense for the sewerage undertaker.

(3) In this Article “airport operator” means the person who is the airport operator for the purposes of the [Airports \(Northern Ireland\) Order 1994 \(NI 1\)](#) in relation to an airport to which Article 25 of that Order applies.

### **Duty to move pipes etc. in certain cases**

**247.**—(1) Where any relevant pipe or other apparatus is for the time being kept installed by a relevant undertaker on, under or over any land, any person with an estate in that land or in adjacent land may by notice to the undertaker require the undertaker to alter or remove that pipe or apparatus on the ground that the alteration or removal of that pipe or apparatus is necessary to enable that person to carry out a proposed improvement of the land in which he has an estate.

(2) Subject to paragraphs (3) and (4), where a notice is served on a relevant undertaker under paragraph (1), it shall be the duty of the undertaker to comply with the requirement contained in the notice except to the extent that that requirement is unreasonable.

(3) Nothing in this Article shall require a relevant undertaker to alter or remove any pipe or apparatus which is kept installed in, under or over any street.

(4) A relevant undertaker may make it a condition of complying with the duty to which it is subject by virtue of a notice served by any person under paragraph (1) that such security as the undertaker may reasonably require has been provided for the discharge of any obligation of that person under paragraph (5).

(5) Where a relevant undertaker carries out any works under this Article by virtue of a notice having been served by any person under paragraph (1), the undertaker shall be entitled to recover any expenses reasonably incurred in carrying out those works from that person.

(6) Where any sums have been deposited with a relevant undertaker by way of security for the discharge of any obligation under paragraph (5), the undertaker shall pay interest at such rate as may be determined either—

- (a) by the undertaker with the approval of the Authority; or
- (b) in default of a determination under sub-paragraph (a), by the Authority.

on every sum so deposited for every 3 months during which it remains in the hands of the undertaker.

(7) An approval or determination by the Authority for the purposes of paragraph (6) may be given or made in relation to a particular case or description of cases or generally and may be revoked at any time.

(8) The duty of a relevant undertaker under this Article shall be enforceable under Article 30 by the Authority.

(9) In this Article—

“improvement”, in relation to any land, includes any development or change of use but does not include an improvement with respect to the supply of water, or the provision of sewerage services, to any premises; and

“relevant pipe” has the same meaning as in Article 219.

### **Protective provisions in respect of watercourses etc.**

**248.**—(1) Nothing in the relevant sewerage provisions shall authorise a sewerage undertaker injuriously to affect—

- (a) any reservoir, canal, watercourse, river or stream, or any feeder thereof; or
- (b) the supply, quality or fall of water contained in, or in any feeder of, any reservoir, canal, watercourse, river or stream,

without the consent of any person who would, apart from this Order, have been entitled by law to prevent, or be relieved against, the injurious affection of, or of the supply, quality or fall of water contained in, that reservoir, canal, watercourse, river, stream or feeder.

(2) Any dispute as to whether the supply, quality or fall of water in any reservoir, canal, watercourse, river, stream or feeder is injuriously affected by the exercise of powers under the relevant sewerage provisions shall be referred, at the option of the party complaining, to the arbitration of a single arbitrator to be appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers.

### **Works in tidal lands etc.**

**249.**—(1) Nothing in any of the provisions of this Part relating to any relevant works power shall authorise any relevant undertaker to carry out any works at any place below the place to which the tide flows at mean high water springs, except in accordance with such plans and sections, and subject to such restrictions, as may, before the works are commenced, have been approved by the Secretary of State and the Crown Estate Commissioners.

(2) An approval for the purposes of paragraph (1) shall be given to a relevant undertaker by the service on that undertaker of a notice containing the approval.

(3) In paragraph (1) the reference to a relevant works power is a reference to a power conferred by any of the relevant sewerage provisions or by any of Articles 219, 220, 222, 224 and 226, except the power conferred by Article 222(3).

### **Power to sell materials deriving from works**

**250.**—(1) A relevant undertaker may sell any materials which—

- (a) have been removed by that undertaker from any premises, including any street, when carrying out works under, or otherwise carrying into effect any provision of this Order; and
- (b) are not before the end of 3 days from the date of their removal claimed by the owner and taken away by him.

(2) Where a relevant undertaker sells any materials under this Article, it shall pay the proceeds to the person to whom the materials belonged after deducting the amount of any expenses incurred by the undertaker.

(3) This Article—

- (a) does not apply to refuse removed by a relevant undertaker; and
- (b) is not to be taken as prejudicing the determination of the rights and liabilities of a relevant undertaker when exercising a power in any case to which the preceding provisions of this Article do not apply.

### **Rights as to sewage**

**251.** A sewerage undertaker—

- (a) shall be entitled to all sewage discharged into its sewers or waste water treatment works; and
- (b) may process, sell or otherwise dispose of such sewage.

### *Interpretation*

### **Interpretation of Part VIII**

**252.**—(1) In this Part “discharge pipe” means a pipe from which discharges are or are to be made under Article 226.

(2) In this Part references to maintaining a pipe include references to cleansing it and references to altering a pipe include references to altering its size or course, to moving or removing it and to replacing it with a pipe which is of the same description of relevant pipe (within the meaning of Article 219) as the pipe replaced.

(3) The powers conferred by this Part on a relevant undertaker shall be exercisable both inside and outside the undertaker’s area.

(4) A relevant undertaker proposing to exercise any of its powers under Article 219 or 220 outside its own area shall, if paragraph (5) applies, give notice of its proposal to the water undertaker or (as the case may be) sewerage undertaker for the area in question and, if that paragraph applies, shall not carry out its proposal—

- (a) without the consent of that other undertaker; or
- (b) where that other undertaker refuses to give its consent, or fails to give its consent before the end of the period of 28 days beginning with the day on which it is notified of the proposal, without the consent of the Authority.

(5) This paragraph applies where the proposal is to lay—

- (a) a water main which is not intended to be—
  - (i) a trunk main; or
  - (ii) a water main used solely for the purpose of supplying water otherwise than for domestic purposes; or
- (b) a sewer which is intended to be a public sewer but not a storm-water overflow sewer.

(6) In so far as any powers conferred by this Part on a relevant undertaker authorise the removal of any pipe or the alteration of its size or course, those powers shall be subject to such obligations by virtue of which the undertaker is required—

- (a) to maintain a pipe or a connection with it; or
- (b) to alter a pipe only where certain conditions are satisfied,

as are imposed on the undertaker by or under any statutory provision.

(7) The powers conferred by virtue of this Part are without prejudice to any power conferred by virtue of any agreement and are cumulative.

## PART IX

### INFORMATION

#### *Registers, maps etc*

#### **The Authority's register**

**253.**—(1) The Authority shall, at such premises and in such form as it may determine, maintain a register for the purposes of Part III and of Article 201.

(2) Subject to any direction given under paragraph (3), the Authority shall cause to be entered in the register the provisions of—

- (a) every appointment under Chapter I of Part III, every termination or transfer of any such appointment, every variation of the area for which any company holds any such appointment and every modification of the conditions of any such appointment;
- (b) every direction, consent or determination given or made under any such appointment by the Department, the Competition Commission or the Authority;
- (c) every final enforcement order made under Article 30, every provisional enforcement order made or confirmed under that Article and every revocation of such a final or provisional enforcement order;
- (d) every undertaking given to and accepted by the Department or the Authority for the purposes of paragraph (1)(b) of Article 31 and every notice under paragraph (3) of that Article;

- (e) every penalty imposed under Article 35(1) or (2) and every notice under Article 35(5); and
- (f) every special administration order and every discharge of such an order.

(3) If it appears to the Department that the entry of any provision in the register would be against the public interest, it may direct the Authority not to enter that provision in the register; and the Authority shall comply with any such direction.

(4) The Authority shall also cause to be entered on the register the provisions of any guidance given to it by the Department under Article 201(8).

(5) It shall be the duty of the Authority to secure that the contents of the register are available, at all reasonable times, for inspection by the public free of charge.

(6) It shall be the duty of the Authority, on the payment of such sum as may be reasonable, to provide a person who requests it with a copy of, or of an extract from, the contents of any part of the register.

(7) Any sums received by the Authority under this Article shall be paid into the Consolidated Fund.

### Reasons for decisions

**254.**—(1) This Article applies to the following decisions of the Authority or the Department—

- (a) the modification of the conditions of an appointment under Chapter I of Part III or the variation of the area to which an appointment relates;
- (b) the termination of such an appointment;
- (c) the giving of any directions or consent in pursuance of a condition included in such an appointment by virtue of Article 19(1);
- (d) the determination of a question referred in pursuance of a condition included in such an appointment by virtue of Article 19(2); and
- (e) the making of a final enforcement order, the making or confirmation of a provisional enforcement order or the revocation of a final order or of a provisional order which has been confirmed.

(2) As soon as reasonably practicable after making such a decision the Authority or the Department shall publish a notice stating the reasons for the decision in such manner as it considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be interested.

(3) A body publishing a notice under paragraph (2) shall serve a copy on the company holding the appointment to which the decision relates.

(4) A body preparing a notice under paragraph (2) shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where it considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body.

(5) This Article does not apply in relation to a decision of the Authority resulting in any provision which the Authority was directed under Article 253(3) not to enter in the register required to be kept under that Article.

### Trade effluent registers

**255.**—(1) It shall be the duty of every sewerage undertaker to secure that copies of—

- (a) every consent given by the undertaker under Chapter III of Part VI;
- (b) every direction given or having effect as if given by the undertaker under that Chapter;

- (c) every joint notice given to the undertaker under Article 177(5)(a);
- (d) every agreement entered into or having effect as if entered into by the undertaker under Article 187; and
- (e) every notice served on the undertaker under Article 190,

are kept available, at all reasonable times, for inspection by the public free of charge at the offices of the undertaker.

(2) It shall be the duty of every sewerage undertaker, on the payment of such sum as may be reasonable, to provide a person who requests it with a copy of, or of an extract from, anything kept available for inspection under this Article.

(3) The duties of a sewerage undertaker under this Article shall be enforceable under Article 30 by the Authority.

### **Register for the purposes of works discharges**

**256.**—(1) Every water undertaker shall keep a register of persons and premises for the purposes of Article 227.

(2) A water undertaker shall enter the name and address of a person in that register in respect of any premises which abut on any watercourse if that person has requested to be so registered and is either—

- (a) the owner or occupier of those premises; or
- (b) an officer of an association of owners or occupiers of premises which abut on that watercourse and include those premises.

(3) If any water undertaker contravenes, without reasonable excuse, any of the requirements of this Article, it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

### **Maps of waterworks**

**257.**—(1) Subject to paragraphs (6) and (7), it shall be the duty of every water undertaker to keep records of the location of—

- (a) every resource main, water main or discharge pipe which is for the time being vested in that undertaker; and
- (b) any other underground works, other than a service pipe, which are for the time being vested in that undertaker.

(2) Subject to paragraph (6), it shall also be the duty of every water undertaker to keep records of the location and other relevant particulars of—

- (a) every water main in relation to which a declaration of vesting has been made by the undertaker under Chapter II of Part IV but has not taken effect; and
- (b) every water main which is the subject of any agreement to make such a declaration which has been entered into by (or on behalf of) the undertaker.

(3) For the purposes of this Article the other relevant particulars of a water main are (in addition to its location) particulars of whether it is a water main in relation to which a declaration has been made under Chapter II of Part IV or a water main which is the subject of an agreement to make such a declaration.

(4) It shall be the duty of every water undertaker to secure that the contents of any records for the time being kept by it under this Article are available, at all reasonable times, for inspection by the public free of charge at an office of the undertaker.

(5) Any information which is required under this Article to be made available by a water undertaker for inspection by the public shall be so made available in the form of a map.

(6) For the purpose of determining whether any failure to make a modification of any records kept under this Article constitutes a breach of the duty imposed by paragraph (1) or (2), that duty shall be taken to require any modification of the records to be made as soon as reasonably practicable after the completion of the works which make the modification necessary; and, where records kept under this Article are modified, the date of the modification and of the completion of the works making the modification necessary shall be incorporated in the records.

(7) Nothing in this Article shall require a water undertaker, at any time before the tenth anniversary of the transfer date, to keep records of—

- (a) any pipe which was laid before the transfer date; or
- (b) any underground works which were completed before the transfer date,

unless those particulars were shown on the day before the transfer date on a map kept by the Department under Article 48 of the [Water and Sewerage Services \(Northern Ireland\) Order 1973 \(NI 2\)](#) (maps of underground works).

(8) The duties of a water undertaker under this Article shall be enforceable under Article 30 by the Department.

(9) In this Article “discharge pipe” has the same meaning as in Part VIII.

### **Sewer maps**

**258.**—(1) Subject to paragraphs (5) to (7), it shall be the duty of every sewerage undertaker to keep records of the location and other relevant particulars—

- (a) of every public sewer, lateral drain or disposal main which is vested in the undertaker;
- (b) of every sewer or lateral drain in relation to which a declaration of vesting has been made by the undertaker under Chapter II of Part VI but has not taken effect; and
- (c) of every drain or sewer which is the subject of any agreement to make such a declaration which has been entered into by the undertaker under Article 161 .

(2) For the purposes of this Article the relevant particulars of a drain, sewer or disposal main are (in addition to its location) particulars—

- (a) of whether it is a drain, sewer or disposal main and of the descriptions of effluent for the conveyance of which it is or is to be used; and
- (b) of whether it is vested in the undertaker or, if it is not, of whether it is a sewer in relation to which a declaration has been made under Chapter II of Part VI or a drain or sewer which is the subject of an agreement under Article 161.

(3) It shall be the duty of every sewerage undertaker to secure that the contents of all the records for the time being kept by it under this Article are available, at all reasonable times, for inspection by the public free of charge at an office of the undertaker.

(4) Any information which is required under this Article to be made available by a sewerage undertaker for inspection by the public shall be so made available in the form of a map.

(5) For the purpose of determining whether any failure to make a modification of any records kept under this Article constitutes a breach of the duty imposed by paragraph (1), that duty shall be taken to require any modification of the records to be made as soon as reasonably practicable after the completion of the works which make the modification necessary; and, where records kept under this Article are modified, the date of the modification and of the completion of the works making the modification necessary shall be incorporated in the records.

(6) Nothing in this Article shall require a sewerage undertaker to keep records of any particulars of—

- (a) a lateral drain laid before the transfer date; or
- (b) any other drain, or any sewer or disposal main laid before the transfer date if—
  - (i) the undertaker does not know of, or have reasonable grounds for suspecting, the existence of the drain, sewer or disposal main; or
  - (ii) it is not reasonably practicable for the undertaker to discover the course of the drain, sewer or disposal main and it has not done so.

(7) Nothing in this Article shall require a sewerage undertaker, at any time before the tenth anniversary of the transfer date, to keep records of any particulars of any such drain, sewer or disposal main laid before the transfer date as would not be excluded from its records by virtue of paragraph (6) (b) unless—

- (a) those particulars were shown on the day before the transfer date on a map kept by the Department under Article 48 of the [Water and Sewerage Services \(Northern Ireland\) Order 1973 \(NI 2\)](#) (sewer maps); or
- (b) it is a drain or sewer in relation to which a declaration of vesting, or an agreement to make such a declaration, has been made since the transfer date.

(8) The duties of a sewerage undertaker under this Article shall be enforceable under Article 30 by the Department.

#### *Publication of certain information and advice*

#### **Publication of certain information and advice**

**259.**—(1) The Department may arrange for the publication, in such form and in such manner as it considers appropriate, of such information relating to any matter which is connected with the carrying out by a company holding an appointment under Chapter I of Part III of the functions of a relevant undertaker as it may appear to the Department to be in the public interest to publish.

(2) DOE may arrange for the publication, in such form and in such manner as it considers appropriate, of such information relating to any matter which is connected with its private supply functions as it may appear to DOE to be in the public interest to publish.

(3) The Authority may arrange for the publication, in such form and in such manner as it considers appropriate, of such information and advice as it may appear to the Authority to be expedient to give to any customer or potential customer of a company holding an appointment under Chapter I of Part III.

(4) In arranging for the publication of any such information or advice the Department, DOE or the Authority shall have regard to the need for excluding, so far as that is practicable—

- (a) any matter which relates to the affairs of an individual, where the publication of that matter would or might, in the opinion of the Department, DOE or (as the case may be) the Authority, seriously and prejudicially affect the interests of that individual; and
- (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Department, DOE or (as the case may be) the Authority, seriously and prejudicially affect the interests of that body.

(5) The OFT shall consult the Authority before publishing under section 6 of the Enterprise Act any information or advice which may be published by the Authority under paragraph (3).

(6) The Department may—



(a) undertake, or contribute towards the cost of, investigations and research relevant to water supplies, sewerage and sewerage treatment; and

(b) arrange for the publication of information on those matters.

(7) DOE may undertake, or contribute towards the cost of, investigations and research relevant to its private supply functions

(8) References in this Article to the private supply functions of DOE are to its functions under Article 107(2) and 118 to 123.

### *Powers to acquire and duties to provide information*

#### **Duties of undertakers to provide the Department with information**

**260.**—(1) It shall be the duty of a company holding an appointment as a relevant undertaker to provide the Department with all such information relating to any matter which—

(a) is connected with, or with any proposals relating to, the carrying out by that company of the functions of a relevant undertaker; or

(b) is material to the carrying out by the Department of any of its functions under this Order, as the Department may reasonably require.

(2) Information required under this Article shall be provided in such form and manner, and be accompanied or supplemented by such explanations, as the Department may reasonably require.

(3) The information which a company may be required to provide under this Article shall include information which, although it is not in the possession of that company or would not otherwise come into the possession of that company, is information which it is reasonable to require that company to obtain.

(4) A requirement for the purposes of this Article shall be contained in a direction which—

(a) may describe the information to be provided in such manner as the Department considers appropriate;

(b) may require the information to be provided on a particular occasion, in particular circumstances or from time to time; and

(c) may be given to a particular company, to companies of a particular description or to all the companies holding appointments under Chapter I of Part II.

(5) The obligations of a relevant undertaker under this Article pursuant to a requirement under paragraph (1) shall be enforceable under Article 30 by the Department.

#### **Power to require information for enforcement purposes**

**261.**—(1) Where it appears to an enforcement authority that a company which holds an appointment as a relevant undertaker may be contravening, or may have contravened—

(a) any condition of the company's appointment in relation to which it is the relevant enforcement authority; or

(b) any statutory or other requirement enforceable under Article 30 in relation to which it is the relevant enforcement authority,

it may, for any purpose connected with such of its powers under Chapter II of Part III as are exercisable in relation to that matter, serve a notice under paragraph (2) on any person.

(2) A notice under this paragraph is a notice—

(a) requiring the person on whom it is served to produce, at a time and place specified in the notice, to—

- (i) the enforcing authority; or
  - (ii) any person appointed by the enforcing authority for the purpose,  
any documents which are specified or described in the notice and are in that person's custody or under his control; or
  - (b) requiring that person, if he is carrying on a business, to provide, at the time and place and in the form and manner specified in the notice, the enforcing authority with such information as may be specified or described in the notice.
- (3) No person shall be required under this Article to produce any documents which he could not be compelled to produce in civil proceedings in the High Court or, in complying with any requirement to provide information, to give any information which he could not be compelled to give in evidence in any such proceedings.
- (4) A person who, without reasonable excuse, fails to do anything required of him by a notice under paragraph (2) shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.
- (5) A person who intentionally alters, suppresses or destroys any document which he has been required by any notice under paragraph (2) to produce shall be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (6) If a person makes default in complying with a notice under paragraph (2), the High Court may, on the application of the enforcing authority which served the notice, make such order as the Court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other body who are responsible for its default.
- (7) Nothing in this Article shall be construed as restricting any power of the Department or the Authority under Article 260 or under the conditions of an appointment under Chapter I of Part III to require a company holding such an appointment to produce any document to it or to provide it with any information.
- (8) Expressions used in this Article and in Chapter II of Part III have the same meanings in this Article as in that Chapter.

### **Provision of information to sewerage undertakers with respect to trade effluent discharges**

- 262.**—(1) The owner or occupier of any land on or under which is situated any sewer, drain, pipe, channel or outlet used or intended to be used for discharging any trade effluent into a sewer of a sewerage undertaker shall, when requested to do so by the undertaker—
- (a) produce to the undertaker all such plans of the sewer, drain, pipe, channel or outlet as the owner or, as the case may be, occupier possesses or is able without expense to obtain;
  - (b) allow copies of the plans so produced by him to be made by, or under the directions of, the undertaker; and
  - (c) provide to the undertaker all such information as the owner or, as the case may be, occupier can reasonably be expected to supply with respect to the sewer, drain, pipe, channel or outlet.
- (2) A request by a sewerage undertaker for the purposes of this Article shall be made in writing.
- (3) Any person who fails to comply with this Article shall be guilty of an offence and liable, on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Expressions used in this Article and in Chapter III of Part VI have the same meanings in this Article as in that Chapter; and, accordingly, Article 198 shall have effect for the purposes of this Article as it has effect for the purposes of that Chapter.

### **Exchange of metering information between undertakers**

**263.**—(1) Where—

- (a) different services are provided in relation to the same premises by different relevant undertakers;
- (b) one of those undertakers has obtained a reading from a meter used in determining the amount of any charges fixed in relation to those premises;
- (c) the charges in relation to those premises of another of those undertakers are fixed by reference to any matter to which the reading is relevant; and
- (d) that other undertaker has agreed to bear a reasonable proportion of the expenses of obtaining the reading together with the reasonable expenses of the disclosure of the reading to it,

it shall be the duty of the undertaker who obtained the reading to disclose the reading to the other undertaker.

(2) Any dispute between a relevant undertaker and any other person (including another such undertaker)—

- (a) as to the terms to be contained in any agreement for the purposes of paragraph (1)(d); or
- (b) as to the amount of any expenses to be borne by any person under any such agreement,

shall be referred to the arbitration of a single arbitrator appointed by agreement between the undertaker and that person or, in default of agreement, by the Authority.

(3) The duties of a relevant undertaker under this Article shall be enforceable under Article 30 by the Authority.

### **Information sharing for purposes of special provision in charges scheme**

**264.**—(1) This Article applies to any information relating to a consumer which is held by the Department of Finance and Personnel or the Northern Ireland Housing Executive for the purposes of the administration of—

- (a) a scheme under Article 30A of the Rates (Northern Ireland) Order 1977; or
- (b) housing benefit.

(2) Information to which this Article applies must, if an authorised officer of a relevant undertaker so requires, be supplied to—

- (a) the undertaker; or
- (b) any person or body providing services to the undertaker,

for the purpose of enabling or assisting the undertaker to give effect to any special provision included in a charges scheme of the undertaker in compliance with regulations under Article 202(2)(d)(i).

(3) Any requirement under paragraph (2) must specify—

- (a) the description of information which is to be supplied;
- (b) in the case of information to be supplied to a person other than the authorised officer, the name and address of that person;
- (c) the form in which the information is to be supplied; and
- (d) the date by which the information is to be supplied.

(4) This Article—

- (a) does not limit the circumstances in which information may be supplied apart from this Article; but
- (b) has effect despite any restriction on the purposes for which information may be disclosed or used.

(5) The Department may by order amend paragraph (1) by adding any description of information to, or removing any description of information from, the list in that paragraph; but no description of information may be added to that list unless it is information of a description held by a Northern Ireland department or the Northern Ireland Housing Executive.

(6) In this Article—

“authorised officer”, in relation to a relevant undertaker, means an officer of the undertaker authorised for the purposes of this Article by the undertaker;

“consumer” has the same meaning as in Chapter I of Part VII;

“housing benefit” means housing benefit provided by virtue of a scheme under section 122 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).

#### *Restriction on disclosure of information*

#### **Restriction on disclosure of information**

**265.**—(1) Subject to the following provisions of this Article, no information with respect to any particular business which—

- (a) has been obtained by virtue of any of the provisions of this Order or the [Water and Sewerage Services \(Northern Ireland\) Order 1973 \(NI 2\)](#); and
- (b) relates to the affairs of any individual or to any particular business,

shall, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.

(2) No person shall disclose any information provided to him under Article 262 or under Chapter III of Part VI except—

- (a) with the consent of the person by whom the information was furnished;
- (b) in connection with the execution of that Chapter;
- (c) for the purposes of any proceedings arising under that Chapter (including any appeal, application to the Department, DOE or the Authority or an arbitration);
- (d) for the purposes of any criminal proceedings (whether or not so arising); or
- (e) for the purposes of any report of any proceedings falling within sub-paragraph (c) or (d).

(3) Paragraph (1) does not apply to any disclosure of information which is made—

- (a) for the purpose of facilitating the performance by the Department, DOE, the Authority, the Council, the Competition Commission or a district council of any functions under this Order, the Water Order, Part III of the [Waste and Contaminated Land \(Northern Ireland\) Order 1997 \(NI 19\)](#) or regulations under Article 4 of the [Environment \(Northern Ireland\) Order 2002 \(NI 7\)](#);
- (b) for the purpose of facilitating the performance by a relevant undertaker of any of the duties imposed on it by or under this Order or the Water Order;
- (c) in pursuance of any duty imposed by Article 52;

- (d) for the purpose of facilitating the performance by a person or body mentioned in paragraph (4) of any functions under a statutory provision specified in paragraph (5);
  - (e) for the purpose of facilitating the exercise by the Secretary of State or the Treasury of any powers conferred by the Financial Services and Markets Act 2000 (c. 8) or by any statutory provision relating to companies, insurance companies or insolvency;
  - (f) for the purpose of facilitating the performance by any inspector appointed under the statutory provisions relating to companies of his functions;
  - (g) for the purpose of facilitating the performance by the Department of Enterprise, Trade and Investment or DFP of any functions conferred on it by any statutory provision relating to companies or insolvency;
  - (h) for the purpose of facilitating the performance by the official receiver for Northern Ireland of his functions under the statutory provisions relating to insolvency or for the purpose of facilitating the performance by a recognised professional body for the purposes of Article 350 of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#) of its functions as such a body;
  - (i) for the purpose of facilitating the performance by the Health and Safety Executive for Northern Ireland of any of its functions;
  - (j) for the purpose of facilitating the performance by the Comptroller and Auditor General for Northern Ireland of any of his functions;
  - (k) for the purpose of facilitating the performance by the Appeals Commission of any of its functions;
  - (l) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
  - (m) for the purposes of any civil proceedings brought under or by virtue of this Order or the Water Order or any statutory provision specified in paragraph (5), or of any arbitration under this Order or the Water Order; or
  - (n) in pursuance of a Community obligation,
- and sections 17 and 18 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) apply to this paragraph as if it were listed in Schedule 4 to that Act.

(4) The persons and bodies specified for the purposes of paragraph (3)(d) are—

- (a) a Minister of the Crown;
- (b) a Northern Ireland department;
- (c) the Competition Commission;
- (d) the Office of Fair Trading;
- (e) the Office of Communications;
- (f) the Authority;
- (g) the Civil Aviation Authority;
- (h) the Financial Services Authority.

(5) The statutory provisions specified for the purposes of paragraphs (3)(d) and (m) are—

- (a) the Trade Descriptions Act 1968 (c. 29);
- (b) the Fair Trading Act 1973 (c. 41);
- (c) the Consumer Credit Act 1974 (c. 39);
- (d) the Estate Agents Act 1979 (c. 38);
- (e) the Competition Act 1980 (c. 2);

- (f) the Telecommunications Act 1984 (c. 12);
  - (g) the Consumer Protection (Northern Ireland) Order 1987 (NI 20);
  - (h) the Control of Misleading Advertisements Regulations 1988 (SI 1988/915);
  - (i) the Electricity (Northern Ireland) Order 1992 (NI 1);
  - (j) Part IV of the Airports (Northern Ireland) Order 1994 (NI 1);
  - (k) the Gas (Northern Ireland) Order 1996 (NI 2);
  - (l) the Competition Act 1998 (c. 41);
  - (m) Part I of the Transport Act 2000 (c 38);
  - (n) the Financial Services and Markets Act 2000 (c. 8);
  - (o) the Enterprise Act;
  - (p) the Communications Act 2003 (c. 21);
  - (q) the Energy (Northern Ireland) Order 2003 (NI 6).
- (6) The Department may by order modify paragraph (3), (4) or (5).
- (7) Nothing in paragraph (1) shall be construed—
- (a) as limiting the matters which may be published under Article 67, 151 or 259 or may be included in, or made public as part of, a report of the Department, DOE, the Authority, the Council, a district council or the Competition Commission under any provision of this Order, the Water Order, Part III of the Waste and Contaminated Land (Northern Ireland) Order 1997 (NI 19) or regulations under Article 4 of the Environment (Northern Ireland) Order 2002 (NI 7), or
  - (b) as applying to any information which has been so published or has been made public as part of such a report or to any information exclusively of a statistical nature.
- (8) Subject to paragraph (9), nothing in paragraph (1) shall preclude the disclosure of information—
- (a) if the disclosure is of information relating to a matter connected with the carrying out of the functions of a relevant undertaker and is made by one Minister of the Crown or government department to another; or
  - (b) if the disclosure is for the purpose of enabling or assisting any public or other authority for the time being designated for the purposes of this Article by an order made by the Department to discharge any functions which are specified in the order.
- (9) An order under paragraph (8) shall be subject to negative resolution; and where such an order designates an authority for the purposes of sub-paragraph (b) of that paragraph, the order may—
- (a) impose conditions subject to which the disclosure of information is permitted by virtue of that paragraph; and
  - (b) otherwise restrict the circumstances in which disclosure is so permitted.
- (10) Any person who discloses any information in contravention of the preceding provisions of this Article shall be guilty of an offence.
- (11) A person who is guilty of an offence under this Article by virtue of paragraph (1) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(12) A person who is guilty of an offence under this Article by virtue of paragraph (2) shall be liable, on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 3 on the standard scale or to both.

(13) Information obtained by the Authority in the exercise of functions which are exercisable concurrently with the OFT under Part I of the Competition Act 1998 (c. 41) is subject to Part 9 of the Enterprise Act (information) and not to the preceding provisions of this Article.

### **Unauthorised disclosure of information relating to particular persons**

**266.**—(1) A person to whom this Article applies commits an offence if he discloses without lawful authority any information—

- (a) which he acquired in the course of his employment;
- (b) which is, or is derived from, information supplied under—
  - (i) Article 264; or
  - (ii) Article 3 of the Water and Sewerage Services (Miscellaneous Provisions) (Northern Ireland) Order 2006; and
- (c) which relates to a particular person.

(2) This Article applies to any person who is employed—

- (a) by a relevant undertaker; or
- (b) in the provision of services to a relevant undertaker for the purposes of any arrangements mentioned in Article 264(2);

and “employment” in relation to any such person shall be construed accordingly.

(3) It is not an offence under this Article to disclose information which has previously been disclosed to the public with lawful authority.

(4) It is a defence for a person charged with an offence under this Article to show that at the time of the alleged offence—

- (a) he believed that he was making the disclosure in question with lawful authority and had no reasonable cause to believe otherwise; or
- (b) he believed that the information in question had previously been disclosed to the public with lawful authority and had no reasonable cause to believe otherwise.

(5) A person who is guilty of an offence under this Article shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(6) For the purposes of this Article a disclosure of information is to be regarded as made with lawful authority if, and only if, it is made—

- (a) with the authority of a relevant undertaker for the purposes of the exercise of its functions;
- (b) in accordance with any statutory provision or order of a court;
- (c) for the purposes of any criminal proceedings; or
- (d) with the consent of the person to whom the information relates.

### *Provision of false information*

#### **Provision of false information**

**267.**—(1) If any person, in providing any information or making any application under or for the purposes of any provision of this Order, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(2) Proceedings for an offence under paragraph (1) shall not be instituted except by or with the consent of the relevant Department or the Director of Public Prosecutions for Northern Ireland.

(3) In paragraph (2) “relevant Department” means—

- (a) DOE, in the case of an offence alleged to have been committed in providing any information or making any application under or for the purposes of any of any provision in Articles 118 to 123;
- (b) the Department in any other case.

## **PART X**

### **REORGANISATION OF THE INDUSTRY**

#### *Introductory*

#### **Interpretation of this Part**

**268.**—(1) In this Part—

“the Companies Order” means the [Companies \(Northern Ireland\) Order 1986 \(NI 6\)](#);

“debentures” includes debenture stock;

“securities”, in relation to a company, includes shares, debentures, bonds and other securities of the company, whether or not constituting a charge on the assets of the company;

“shares” includes stock;

“subsidiary” has the meaning assigned to it by Article 4 of the Companies Order;

“subsidiary undertaking” has the meaning assigned to it by Article 266 of the Companies Order;

“the successor company” has the meaning assigned to it by Article 269(1);

“the transfer scheme” has the meaning assigned to it by Article 270(1).

(2) A company shall be regarded for the purposes of this Part as wholly owned by the Crown at any time when none of the issued shares in the company is held otherwise than—

- (a) by, or by a nominee of, the Department; or
- (b) by a company which is itself wholly owned by the Crown.



### *The successor company*

#### **The successor company**

**269.**—(1) The Department may by order nominate as the successor company for the purposes of this Part a company which—

- (a) is a company limited by shares, within the meaning of the Companies Order; and
- (b) is wholly owned by the Crown;

and references in this Part to “the successor company” are references to the company so nominated.

(2) The successor company shall not—

- (a) be regarded as the servant or agent of the Crown;
- (b) have any status, immunity or privilege of the Crown,

and its property shall not be regarded as property of, or held on behalf of, the Crown.

### *Transfer to successor company of certain assets and liabilities of the Department*

#### **Transfer scheme**

**270.**—(1) The Department shall make a scheme (“the transfer scheme”) for the transfer to the successor company of—

- (a) specified water service assets and water service liabilities of the Department; and
- (b) such other assets and liabilities of the Department as may be specified.

(2) On such day as the Department may by order specify (the “transfer date”) the assets and liabilities specified for transfer to the successor company shall, by virtue of this paragraph, become assets and liabilities of that company.

(3) The provisions of Schedule 11 shall apply in relation to—

- (a) the transfer scheme; and
- (b) the transfer effected by paragraph (2);

and that paragraph shall have effect subject to the provisions of that Schedule.

(4) In this Article—

“specified” means specified in the transfer scheme;

“water service assets” and “water service liabilities” mean, respectively, the assets and liabilities which, either wholly or in part, subsist immediately before the transfer date for the purposes of, or in connection with, or are otherwise attributable to, the functions exercisable by the Department immediately before that date under the [Water and Sewerage Services \(Northern Ireland\) Order 1973 \(NI 2\)](#).

### *Ownership of the successor company*

#### **Initial Departmental holding in the successor company**

**271.**—(1) As a consequence of the vesting in the successor company of any assets and liabilities under Article 270, the company shall issue such securities of the company as the Department may direct to the Department.

(2) The Department shall not give a direction under paragraph (1) at a time when the successor company has ceased to be wholly owned by the Crown.

(3) Securities required to be issued under this Article shall be issued at such time or times and on such terms as the Department may direct.

(4) Shares in the successor company which are issued under this Article—

- (a) shall be of such nominal value as the Department may direct; and
- (b) shall be issued as fully paid and treated for the purposes of the Companies Order as if they had been paid up by virtue of the payment to the company of their nominal value in cash.

(5) For the purposes of the Companies Order, the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#) and the [Company Directors Disqualification \(Northern Ireland\) Order 2002 \(NI 4\)](#), the Crown is not to be treated as a shadow director of the successor company by reason that the company is wholly owned by the Crown or that the directors of that company are accustomed to act in accordance with the Crown's directions or instructions.

(6) Paragraph (5) applies to any subsidiary or subsidiary undertaking of the successor company as it applies to the successor company.

### **Departmental investment in securities of the successor company**

**272.** The Department may at any time acquire—

- (a) securities of the successor company; or
- (b) rights to subscribe for any such securities.

### **Disposal of securities, etc**

**273.—**(1) The Department shall not dispose of any securities or rights issued under Article 271 or acquired under Article 272 except—

- (a) in a case of a disposal requiring Assembly approval, with that approval; and
- (b) in the case of any other disposal, with the consent of DFP.

(2) A disposal requires Assembly approval if, in the opinion of the Department, the effect of the disposal would be that the successor company is no longer controlled by the Department.

(3) Assembly approval is given to a disposal if the disposal is approved by a resolution of the Assembly passed on a resolution specifying—

- (a) the size and nature of the disposal;
- (b) the person to whom it is to be made.

(4) For the purposes of this Article the successor company is controlled by the Department if the Department holds securities of the company entitling it to exercise or control the exercise of a majority of the voting rights in the company which are exercisable at a general meeting on all, or substantially all, matters.

### **Exercise of Departmental powers through nominees**

**274.—**(1) The Department may, for the purposes of Article 271 or 272, appoint any person to act as the nominee, or one of the nominees, of the Department; and—

- (a) securities of the successor company may be issued under Article 271 to any nominee of the Department appointed for the purposes of that Article; and
- (b) any such nominee appointed for the purposes of Article 272 may acquire securities or rights under that Article,

in accordance with directions given by the Department.

(2) Any person holding any securities or rights as a nominee of the Department under paragraph (1) shall hold and deal with them (or any of them) on such terms and in such manner as the Department may direct.

(3) For the purposes of Article 273—

- (a) any securities or rights held by a nominee of the Department shall be treated as held by the Department; and
- (b) any disposal by a nominee of the Department shall be treated as a disposal by the Department.

#### *Finances of the successor company*

#### **Statutory reserves**

**275.**—(1) If the Department so directs at any time before the successor company ceases to be wholly owned by the Crown, such sum as may be specified in the direction shall be carried by the successor company to a reserve (“the statutory reserve”).

(2) The statutory reserve may only be applied by the successor company—

- (a) in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares; or
- (b) if the Department so directs, as if it were profits available for distribution within the meaning of Article 271(1) of the Companies (Northern Ireland) Order 1986.

(3) Notwithstanding paragraph (2), the statutory reserve shall not count as an undistributable reserve of the successor company for the purposes of Article 272(3)(d) of the Companies Order; but for the purpose of determining under that Article whether the successor company may make a distribution at any time any amount for the time being standing to the credit of the statutory reserve (excluding any amount which by virtue of paragraph (2)(b) is authorised to be, but has not yet been, applied as if it were profits available for distribution) shall be treated for the purposes of Article 272(3)(c) of that Order as if it were unrealised profits of the company.

#### **Accounts, etc. of successor company**

**276.**—(1) The Department shall, as soon as practicable, lay before the Assembly a copy of the documents mentioned in paragraph (2) which are laid before a general meeting of the successor company at a time when the company is wholly owned by the Crown.

(2) The documents referred to in paragraph (1) are—

- (a) the profit and loss account;
- (b) the group accounts;
- (c) the balance sheet;
- (d) the auditors' report;
- (e) the directors' report;

and expressions used in this paragraph have the same meaning as in the Companies Order.

(3) For the purposes of any statutory accounts of the successor company, the vesting in the successor company under Article 270 of assets and liabilities of the Department shall be taken to have been effected immediately after the end of the last complete financial year of the Department to end on or before the transfer date and to have been a vesting of such of the assets and liabilities to which the Department was entitled or subject immediately before the end of the year as are specified in the transfer scheme.

(4) The value of any asset and the amount of any liability which is taken under paragraph (3) to have been vested in the successor company shall be taken to have been—

- (a) the value or amount determined by or under the transfer scheme, or
- (b) (if no such provision is included in the transfer scheme) the value or amount assigned to the asset or liability for the purposes of the corresponding statement of accounts prepared by the Department in respect of its last complete financial year to end on or before the transfer date.

(5) In this Article “statutory accounts” means any accounts (including group accounts) prepared for the purpose of any provision of the Companies Order.

### **Restrictions on borrowing, charging, etc.**

**277.**—(1) If articles of association of the successor company confer on the Department powers exercisable with the consent of DFP for, or in connection with, restricting the sums of money which may be borrowed or raised by the successor company during any period, those powers shall be exercisable in the public interest notwithstanding any rule of law or any statutory provision.

(2) For the purposes of this Article an alteration of the articles of association of the successor company shall be disregarded if the alteration—

- (a) has the effect of conferring or extending any such power as is mentioned in paragraph (1); and
- (b) is made at a time when that company has ceased to be wholly owned by the Crown.

(3) The successor company may not, at any time before it ceases to be wholly owned by the Crown, charge any of its assets without the approval of the Department and DFP.

### **Departmental lending, guarantees, etc.**

**278.**—(1) The Department may give financial assistance to the successor company in such form and upon such terms and conditions as the Department may determine.

(2) Without prejudice to the generality of paragraph (1), the Department may in exercise of its powers under that paragraph—

- (a) make loans or grants to the successor company;
- (b) write off the principal and interest of any loans so made or enter into an arrangement for the conversion into share capital of the principal and interest of loans so made;
- (c) guarantee obligations (arising out of loans or otherwise) incurred by the successor company.

(3) The Department may, upon such terms and conditions as it may determine, give to any person entering into a contract—

- (a) with the successor company; or
- (b) which in the opinion of the Department is directly or indirectly related to a contract entered or to be entered into by another person with the successor company,

any form of guarantee to meet any contingency arising out of or in connection with the contract.

(4) Immediately after any guarantee is given under this Article, the Department shall lay a statement of the guarantee before the Assembly; and immediately after any sum is issued for fulfilling a guarantee so given, the Department shall so lay a statement relating to that sum.

(5) If any sums are issued in fulfillment of a guarantee given under this Article the successor company shall make to the Department, at such times and in such manner as the Department may direct—

- (a) payments of such amounts as the Department may direct in or towards repayment of the sums so issued; and
  - (b) payments of interest on what is outstanding for the time being in respect of sums so issued at such rate as the Department may direct.
- (6) In this Article “guarantee” includes any form of indemnity or assurance.
- (7) This Article applies to any subsidiary or subsidiary undertaking of the successor company as it applies to the successor company

### **Exercise of certain functions of the Department under this Part**

**279.** The Department shall not, except with the consent of DFP, exercise any power under any of the following provisions of this Part, namely—

- (a) Article 269(1);
- (b) Article 270(1);
- (c) Article 271(1) to (4);
- (d) Article 272;
- (e) Article 274;
- (f) Article 275(1);
- (g) Article 278(1) to (3) and (7);
- (h) paragraph 3 of Schedule 11.

## **PART XI**

### **AMENDMENTS TO THE WATER ORDER**

#### **Pollution of water**

**280.** For Article 7 of the Water Order substitute—

#### **“Pollution of water: offences**

**7.—(1)** Subject to the following provisions of this Part, a person commits an offence if, whether knowingly or otherwise—

- (a) he discharges or deposits any poisonous, noxious or polluting matter so that it enters a waterway or water contained in any underground strata; or
- (b) he discharges or deposits any matter so that it enters a waterway or water contained in any underground strata and tends either directly or in combination with similar acts (whether his own or those of another) to impede the proper flow of the water of the waterway or strata in a manner leading or likely to lead to pollution or a substantial aggravation of pollution due to other causes or of its consequences.

**(2)** Subject to the following provisions of this Part, a person commits an offence if, by any means whatsoever, he makes any discharge of any trade or sewage effluent—

- (a) into a waterway or water contained in any underground strata; or
- (b) from land, through a pipe, into the sea outside the seaward limits of any waterway.

**(3)** On a person’s conviction of an offence under paragraph (1), the court by or before which he is convicted may on the application of the Department, of which not less than

10 days' notice has been given to the person charged, make an order directing him to take such measures as the court may consider necessary to remedy or nullify any contravention of paragraph (1).

(4) A person who fails to comply with an order under paragraph (3) shall be guilty of an offence.

(5) In paragraph (1) any reference to matter entering a waterway or water contained in any underground strata includes a reference to its entering the waterway or water by being carried into it.

(6) Subject to the following provisions of this Part, a person who contravenes the conditions of any consent under Article 7A(3)(a) shall be guilty of an offence.

(7) A person guilty of an offence under this Article shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding £20,000 or to both.

### Exceptions

**7A.—**(1) A person shall not be guilty of an offence under Article 7(2) or (6) by reason of any discharge of trade or sewage effluent from a vessel.

(2) A person shall not be guilty of an offence under Article 7(1), (2) or (6) in respect of the discharge or deposit of any effluent or other matter if—

- (a) the discharge or deposit is made in an emergency in order to avoid danger to life or health;
- (b) that person takes all such steps as are reasonably practicable in the circumstances for minimising the extent of the discharge or deposit and of its polluting effects; and
- (c) particulars of the discharge or deposit are furnished to the Department as soon as reasonably practicable after it occurs.

(3) A person shall not be guilty of an offence under Article 7(1) or (2) or (6) in respect of the discharge or deposit of any effluent or other matter if the discharge or deposit is made under and in accordance with, or as a result of any act or omission under and in accordance with—

- (a) a consent given by the Department under this Article;
- (b) a disposal licence under Article 7 of the Pollution Control and Local Government (Northern Ireland) Order 1978;
- (c) a licence granted under Part II of the Food and Environment Protection Act 1985;
- (d) an authorisation granted under the Industrial Pollution Control (Northern Ireland) Order 1997;
- (e) a waste management licence granted under the Waste and Contaminated Land (Northern Ireland) Order 1997;
- (f) a permit granted under regulations under Article 4 of the Environment (Northern Ireland) Order 2002;
- (g) Article 226 of the Water and Sewerage Services (Northern Ireland) Order 2006;
- (h) any statutory order which expressly confers power to discharge effluent into water;

(i) any prescribed statutory provision.

(4) Schedule 1 shall have effect, subject to Article 13, with respect to the making of applications for consents under paragraph (3)(a) (“discharge consents”) and with respect to the giving, revocation, transfer and modification of such consents.

(5) Nothing in any disposal licence shall be treated for the purposes of paragraph (3) as authorising—

- (a) any discharge as is mentioned in Article 7(2); or
- (b) any act or omission so far as it results in any such discharge.

(6) In paragraph (3)(h) “statutory order” means—

- (a) an order under Article 138(1)(c) or 228 of the Water and Sewerage Services (Northern Ireland) Order 2006;
- (b) an order under Article 23(2);
- (c) any other order or scheme made under a statutory provision.

(7) A person shall not be guilty of an offence under Article 7(1), (2) or (6) if he discharges any effluent or other matter into a drain mentioned in paragraph (8) so that it enters a waterway or water contained in underground strata, if the Department for Regional Development has given its consent to the discharge (either unconditionally or subject to conditions which were observed).

(8) The drains referred to in paragraph (7) are —

- (a) a road drain within the meaning of Article 45 of the Roads (Northern Ireland) Order 1993; or
- (b) a drain constructed and laid by the Department for Regional Development under Article 45(1)(b) of that Order.

### **Discharges into and from public sewers, etc.**

**7B.—**(1) A person shall not be guilty of an offence under Article 7(1), (2) or (6) in respect of a discharge made into a sewer or waste water treatment works vested in a sewerage undertaker if the undertaker was bound to receive the discharge there either unconditionally or subject to conditions which were observed.

(2) A sewerage undertaker shall not be guilty of an offence under Article 7(1), (2) or (6) by reason only of the fact that a discharge from a sewer or works vested in the undertaker contravenes conditions of a consent relating to the discharge if—

- (a) the contravention is attributable to a discharge which another person made into the sewer or works;
- (b) the undertaker either was not bound to receive the discharge into the sewer or works or was bound to receive it there subject to conditions which were not observed; and
- (c) the undertaker could not reasonably have been expected to prevent the discharge into the sewer or works.

(3) Paragraph (4) applies for the purpose of determining liability where—

- (a) sewage effluent is discharged as mentioned in Article 7(1) or (2) from any sewer or works (“the discharging sewer”) vested in a sewerage undertaker (“the discharging undertaker”); and
- (b) the effluent was, before being discharged from the discharging sewer, discharged through a main connection into that sewer or into any other sewer or waste water treatment works vested in the discharging undertaker by another sewerage

undertaker (“the sending undertaker”) under an agreement having effect between the discharging undertaker and the sending undertaker under Article 167 of the Water and Sewerage Services (Northern Ireland) Order 2006.

- (4) The sending undertaker shall be deemed to have made the discharge if—
- (a) matter included in the discharge was received by it into a sewer or works vested in it; and
  - (b) it was bound (either unconditionally or subject to conditions which were observed) to receive that matter into that sewer or waste water treatment works.
- (5) The Department for Regional Development may by regulations make further provision for the purpose of determining liability under Article 7(1), (2) or (6) as between two or more persons in respect of any discharge into or from any public sewer or any waste water treatment works.
- (6) In this Article “main connection” has the same meaning as in Article 167 of the Water and Sewerage Services (Northern Ireland) Order 2006.”.

### **Relationship of Part II of Water Order with other statutory provisions**

**281.**—(1) For Article 10 of the Water Order (relationship with other statutory provisions) substitute—

#### **“Relationship of this Part with other statutory provisions controlling pollution**

**10.** The discharge or deposit of any effluent or matter made under and in accordance with, or as a result of any act or omission under and in accordance with, a discharge consent shall not constitute an offence under or a contravention of—

- (a) section 41 of the Foyle Fisheries Act (Northern Ireland) 1952 or any regulations under section 13 of that Act;
- (b) section 47 of the Fisheries Act (Northern Ireland) 1966 or any byelaws under section 26 of that Act;
- (c) regulations under Article 4 of the Environment (Northern Ireland) Order 2002;
- (d) Article 23 of the Industrial Pollution Control (Northern Ireland) Order 1997; or
- (e) any regulations under Article 14 or 36.”.

### **Charges for transfer of discharge consent**

**282.** In Article 11 of the Water Order (scheme of charges) in paragraph (1)(a) after “variation” insert “or transfer”.

### **Anti-pollution works**

**283.**—(1) In Article 16 of the Water Order (anti-pollution works) in paragraph (1)(b)(iii) for “in them” substitute “dependent on the aquatic environment of the waters”.

(2) In Article 17 of that Order (notices to carry out anti-pollution works) in paragraph (2)(b)(iii) for “in them” substitute “dependent on the aquatic environment of the waters”.

### **Provision of information**

**284.** In the Water Order after Article 28 insert—



**“Provision of information**

**28A.**—(1) It shall be the duty of the Department—

- (a) to provide a water undertaker with all such information to which this Article applies as is in the possession of the Department and is reasonably requested by the undertaker for purposes connected with the carrying out of its functions; and
- (b) to provide reasonable facilities to all persons—
  - (i) for the inspection of the contents of any records kept by the Department and containing information to which this Article applies; and
  - (ii) for the taking of copies of, or of extracts from, any such records.

(2) It shall be the duty of every water undertaker to provide the Department with all such information to which this Article applies as is in the possession of the undertaker and is reasonably requested by the Department for purposes connected with the carrying out of any of its functions.

(3) Where records of the flow, level or volume of water in any waterway are kept by a person other than a water undertaker, the Department shall have the right at all reasonable times—

- (a) to inspect the contents of any of those records; and
- (b) to take copies of, or of extracts from, the contents of any of those records,

and any person who, without reasonable excuse, refuses or fails to permit the Department to exercise its right under this paragraph shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.

(4) Information provided to a water undertaker or to the Department under paragraph (1) or (2) shall be provided in such form and in such manner and at such times as the undertaker or, as the case may be, the Department may reasonably require; and the duties of the Department under paragraph (1) shall extend to information provided to or obtained by the Department under paragraph (2) or (3).

(5) Information or facilities provided under paragraph (1) or (2) to—

- (a) the Department,
- (b) the Department of Agriculture and Rural Development;
- (c) the Department of Culture, Arts and Leisure;
- (d) a water undertaker; or
- (e) Waterways Ireland,

shall be provided free of charge; and facilities provided under paragraph (1) to other persons may be provided on terms requiring the payment by persons making use of the facilities of such reasonable charges as the Department may determine.

(6) The duties of a water undertaker under paragraph (2) shall be enforceable under Article 30 of the Water and Sewerage Services (Northern Ireland) Order 2006 by the Northern Ireland Authority for Utility Regulation.

(7) This Article applies to information about—

- (a) the flow, level or volume of any water in any waterway or contained in underground strata;
- (b) rainfall or any fall of snow, hail or sleet; or
- (c) the evaporation of any water.”.

## Restriction on disclosure of information

285. After Article 29 of the Water Order insert—

### “Restriction on disclosure of information

**29A.**—(1) Subject to the following provisions of this Article, no information with respect to any particular business which—

- (a) has been obtained by virtue of any of the provisions of this Order; and
- (b) relates to the affairs of any individual or to any particular business,

shall, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.

(2) Paragraph (1) does not apply to any disclosure of information which is made—

- (a) for the purpose of facilitating the performance by the Department, the Department for Regional Development, the Northern Ireland Authority for Utility Regulation, the General Consumer Council, the Competition Commission or the Appeals Commission of any functions under this Order or the Water and Sewerage Services (Northern Ireland) Order 2006;
- (b) for the purpose of facilitating the performance by a relevant undertaker of any of the duties imposed on it by or under this Order or the Water and Sewerage Services (Northern Ireland) Order 2006;
- (c) for the purposes of a register maintained under Article 30.”.

## Civil liability

286. After Article 36 of the Water Order insert—

### “Civil Liability

**36A.** Except in so far as this Part expressly otherwise provides and subject to the provisions of section 20(1) of the Interpretation Act (Northern Ireland) 1954 (c. 33) (which relates to offences under two or more laws), nothing in this Part—

- (a) confers a right of action in any civil proceedings (other than proceedings for the recovery of a fine) in respect of any contravention of this Part or any subordinate legislation, consent or other instrument made, given or issued under this Part;
- (b) derogates from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Part; or
- (c) affects any restriction imposed by or under any other statutory provision.”.

## Liability to prosecution for certain offences

287. Renumber Article 37 of the Water Order (prosecutions) as paragraph (1) of that Article and after that paragraph insert—

“(2) Without prejudice to section 20(2) of the Interpretation Act (Northern Ireland) 1954 (c. 33), where the commission by any person of an offence under any provision of this Part (except Article 26(6), 28(3) or 29) is due to the act or default of some other person, that other person may be charged with and convicted of the offence whether or not proceedings for the offence are taken against the first-mentioned person.”.

## **Application of Part II of the Water Order to the Crown**

**288.**—(1) For Article 38A of the Water Order insert—

### **“Application of this Part to the Crown**

**38A.**—(1) Subject to the provisions of this Article, this Part binds the Crown.

(2) No contravention by the Crown of any provision made by or under this Part shall make the Crown criminally liable; but the High Court may, on the application of the Department, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in paragraph (2), any provision made by or under this Part shall apply to persons in the public service of the Crown as it applies to other persons.

(4) If the Secretary of State certifies that it appears to him, as respects any Crown land and any powers of entry exercisable in relation to it specified in the certificate, that it is requisite or expedient that, in the interests of national security, the powers should not be exercisable in relation to that land, those powers shall not be exercised in relation to that land.

(5) Subject to paragraph (4), the powers conferred by Article 24 shall be exercisable in relation to Crown land only with the consent of the appropriate authority.

(6) In this Article any reference to the Crown includes a reference to the Crown in right of Her Majesty’s Government in Northern Ireland.

(7) In this Article—

“the appropriate authority” in relation to any land, means—

- (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners;
- (b) in the case of any other land belonging to Her Majesty in right of the Crown, the government department having the management of that land;
- (c) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, that government department;

and, if any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Department of Finance and Personnel or, as the case may be, the Treasury, whose decision shall be final;

“Crown estate” means an estate—

- (a) belonging to Her Majesty in right of the Crown; or
- (b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department;

“Crown land” means land in which there is a Crown estate.”.

## **Matters to be taken into account in exercising certain functions under Part III of Water Order**

**289.** In Article 40(1) of the Water Order (matters to be taken into account in exercising functions under Part III of that Order) after sub-paragraph (e) insert—

- “(ea) the duties imposed under Parts III to VI of the Water and Sewerage Services (Northern Ireland) Order 2006 on any relevant undertaker (within the meaning of that Order) which is likely to be affected by the exercise of the function in question;”.

## Discharge consents

**290.**—(1) Schedule 1 to the Water Order (discharge consents) is amended as follows.

(2) After paragraph 1 insert—

### “Consultation in connection with applications

**1A.**—(1) Subject to sub-paragraph (2), the Department shall give notice of any application under paragraph 1, together with a copy of the application, to the persons who are prescribed to be consulted under this paragraph and shall do so within the specified period for notification.

(2) The Department may by regulations exempt any class of application from the requirements of this paragraph or exclude any class of information contained in applications from those requirements, in all cases or as respects specified classes only of persons to be consulted.

(3) Any representations made by the persons so consulted within the period allowed shall be considered by the Department in determining the application.

(4) For the purposes of sub-paragraph (1)—

(a) persons are prescribed to be consulted on any description of application if they are persons specified for the purposes of applications of that description in regulations made by the Department; and

(b) the “specified period for notification” is the period specified in the regulations.

(5) Any representations made by any other persons within the period allowed shall also be considered by the Department in determining the application.

(6) Subject to sub-paragraph (7), the period allowed for making representations is—

(a) in the case of persons prescribed to be consulted, the period of 6 weeks beginning with the date on which notice of the application was given under sub-paragraph (1), and

(b) in the case of other persons, the period of 6 weeks beginning with the date on which the making of the application was advertised in pursuance of paragraph 1(1)(b).

(7) The Department may, by regulations, substitute for any period for the time being specified in sub-paragraph (6)(a) or (b), such other period as it considers appropriate.”

(3) In paragraph 2(1)(b) at the end add “or paragraph 1A ”.

(4) In paragraph 4(1)(a) for “Article 9” substitute “Article 7(2)”.

(5) In paragraph 8 omit—

(a) in sub-paragraphs (2) and (3), the words “, subject to sub-paragraph (4),”; and

(b) sub-paragraph (4).

(6) In paragraph 8 for sub-paragraph (6) substitute—

“(6) Where a discharge consent given under paragraph 2 or 4 is to be transferred under sub-paragraph (1)—

(a) the person from whom and the person to whom the consent is to be transferred shall give joint notice to the Department of the proposed transfer;

(b) the notice may specify the date on which it is proposed that the transfer should take effect;

(c) within 21 days beginning with the date of receipt of the notice duly given in accordance with head (a), the Department shall—

- (i) arrange to amend the consent by substituting the name of the transferee as holder of the consent; and
  - (ii) serve notice on the transferor and the transferee that the amendment has been made; and
- (d) the transfer shall take effect from the later of—
  - (i) the date on which the Department amends the consent; and
  - (ii) the date (if any) specified in the joint notice under paragraph (a).
- (6A) A joint notice under sub-paragraph (6)(a) shall include such information as may be prescribed.
- (6B) If the person from whom the consent is to be transferred is a person in whom the consent has vested by virtue of sub-paragraph (2) or (3), a joint notice given under sub-paragraph (6)(a) shall be of no effect unless the notice required by sub-paragraph (7) has been given.
- (6C) A notice or other instrument given by or on behalf of the Department pursuant to sub-paragraph (6) shall not constitute an instrument signifying the consent of the Department for the purposes of paragraph 6.”
- (7) In paragraph 8(9), omit the words “(6) or”.

#### Minor amendments

- 291.**—(1) The Water Order is amended as follows.
- (2) In Article 2(2) for the definitions of “public sewage treatment works” and “public sewer” substitute—

““public sewer” has the same meaning as in the Water and Sewerage Services (Northern Ireland) Order 2006;”.
  - (3) In Article 2(2) for the definitions of “sewage”, “sewage treatment works” “sewage effluent” and “sewerage undertaker” substitute—

““sewage effluent” includes any effluent from any waste water treatment works, but does not include surface water (within the meaning of the Water and Sewerage Services (Northern Ireland) Order 2006);”.
  - (4) In Article 2(2) after the definition of “vessel” insert—

““waste water treatment works” has the same meaning as in the Water and Sewerage Services (Northern Ireland) Order 2006;”.
  - (5) In Article 2(2) in the definition of “waterway” for paragraph (c) substitute—

“(c) any main or service pipe within the meaning of the Water and Sewerage Services (Northern Ireland) Order 2006 which is vested in or under the control of a sewerage undertaker;”.
  - (6) In Article 3(1) in the definition of “discharge consent” for “for the purposes of Article 9” substitute “under Article 7A(3)(a)”.
  - (7) Omit Article 9.
  - (8) In Article 14(2)(c) for “Article 9(4)” substitute “Article 7(7)”.
  - (9) In Article 15(2)(a) and (b) for “its consent for the purposes of Article 9 to” substitute “a discharge consent in relation to”.
  - (10) In Article 15 at the end add—

“(7) Article 7A(2) applies in relation to an offence under paragraph (6) as it applies in relation to an offence under Article 7(1), (2) or (6).”.

(11) In Article 30(1)(i) for “Article 9” substitute “Article 7(2)”.

## PART XII

### MISCELLANEOUS AND SUPPLEMENTAL

#### *The Water Appeals Commission*

##### **The Water Appeals Commission**

**292.**—(1) There shall continue to be a body known as the Water Appeals Commission for Northern Ireland (in this Order referred to as “the Appeals Commission”).

(2) The Appeals Commission shall consist of—

- (a) a Chief Commissioner; and
- (b) such number of other Commissioners as the Office may determine.

(3) The Commissioners shall be appointed by the Office.

(4) Subject as follows a Commissioner shall hold office in accordance with the terms of his appointment.

(5) A Commissioner shall not—

- (a) engage directly or indirectly; or
- (b) be a partner of any person who so engages,

in a gainful profession, occupation or business if to do so would in any way be incompatible with his functions as a Commissioner.

(6) There shall be paid to a Commissioner or in respect of his service such remuneration and allowances and such pension, allowances or benefits as the Office may determine.

(7) The Office may appoint persons to assist the Appeals Commission in the performance of its functions.

(8) There shall be paid to persons appointed under paragraph (7) such remuneration and allowances and to, or in respect of the service of, those persons such pension, allowances or benefits as the Office may determine.

(9) A determination of the Office under this Article requires the approval of DFP.

(10) In this Article “the Office” means the Office of the First Minister and deputy First Minister.

##### **Procedure of the Appeals Commission**

**293.**—(1) Where, under this Order or any other statutory provision, the Appeals Commission may determine an appeal or other matter or inquire into any matter—

- (a) the jurisdiction of the Appeals Commission may be exercised by any one of the Commissioners nominated by the Chief Commissioner;
- (b) the Chief Commissioner may, after consultation with the other Commissioners and the Office, appoint an assessor to sit with the Commissioner nominated under sub-paragraph (a) to advise him on any matters arising;
- (c) notwithstanding sub-paragraphs (a) and (b) any decision on the appeal or other matter and any report on the inquiry shall be made by the Appeals Commission.

(2) Paragraph (1)(b) does not apply where an appeal or other matter is to be decided solely by reference to written representations.

(3) The Appeals Commission may pay to any assessor appointed under paragraph (1)(b) such fees and allowances as the Commission, with the approval of the Office, may determine.

(4) Where an appeal is made to the Appeals Commission under any of the statutory provisions listed in paragraph (5), the Appeals Commission—

(a) shall publish notice of the appeal in at least two newspapers circulating in the area to which the appeal relates; and

(b) may recover the expenses of that publication from the appellant.

(5) The statutory provisions referred to in paragraph (4) are—

(a) section 11A(4)(b) of the Fisheries Act (Northern Ireland) 1966 (c. 17) (fish culture licences);

(b) in the Water Order—

(i) Article 6(7) (water quality objectives);

(ii) Article 13(1)(a), (b), (c), (d), (f) and (g) (discharge consents); and

(iii) Article 20(3)(h) (abstraction and impounding of water).

(6) Except in the case of a decision to which paragraph (9) or (10) applies, the Appeals Commission shall report its decision to the relevant Department which (subject to paragraph (7)) shall notify—

(a) the applicant or appellant; and

(b) any other person appearing to that Department to be interested,  
of that decision.

(7) Where a decision is reported to it under paragraph (6), the relevant Department may, after considering any representations made to it under paragraph (8)—

(a) vary the decision of the Appeals Commission; or

(b) substitute for it a new decision.

(8) Where the relevant Department intends to act under paragraph (7) it shall, within 28 days from the date on which the decision of the Appeals Commission is reported to it under paragraph (6)—

(a) notify the appellant or applicant and any other interested person of its intention and of the reasons; and

(b) afford to those persons an opportunity of making representations to it.

(9) This paragraph applies to a decision by the Appeals Commission on an appeal under any of the following statutory provisions—

(a) Article 13(1) of the Water Order (discharge consents);

(b) Article 20(3)(h) of that Order (abstraction and impounding of water);

(c) Article 32(5) of that Order (exclusion from register of confidential information).

(10) This paragraph applies to a decision by the Appeals Commission under—

(a) Article 120 (confirmation of private supply notices);

(b) Article 172(5) (agreements as to use of sewers, etc);

(c) the Drainage Order.

(11) The Appeals Commission's decision, or any variation or substitution under paragraph (7) of that decision, shall be final except on a point of law.

(12) The Office may, after consultation with the Appeals Commission, make rules regulating the procedure to be followed by the Appeals Commission.

(13) Subject to—

- (a) any rules under paragraph (10); and
- (b) any other statutory provision,

the Appeals Commission may regulate its own procedure.

(14) In this Article—

“the Office” means the Office of the First Minister and deputy First Minister;

“the relevant department”, in relation to any decision of the Appeals Commission, means whichever of—

- (a) the Department;
- (b) DOE;
- (c) DARD; or
- (d) DCAL,

has functions under or in relation to the statutory provision conferring jurisdiction on the Commission to make that decision.

### *Miscellaneous*

#### **Directions in the interests of national security**

**294.**—(1) The Secretary of State may, after consultation with a relevant undertaker, give to that undertaker such directions of a general character as appear to the Secretary of State to be requisite or expedient in the interests of national security.

(2) If it appears to the Secretary of State to be requisite or expedient to do so in the interests of national security, he may, after consultation with a relevant undertaker, give to that undertaker a direction requiring it to do, or not to do, a particular thing specified in the direction.

(3) It shall be the duty of a relevant undertaker, notwithstanding any other duty imposed on it (whether or not by or under this Order), to comply with any direction given to it under this Article; and the duty of a relevant undertaker to comply with any such direction shall be enforceable under Article 30 by the Department.

(4) The Secretary of State may, after consultation with the Council, give to the Council such directions of a general character as to the exercise of its functions under this Order as appear to the Secretary of State to be requisite or expedient in the interests of national security.

(5) If it appears to the Secretary of State to be requisite or expedient to do so in the interests of national security, he may, after consultation with the Council, give to the Council a direction requiring it in the exercise of its functions under this Order to do, or not to do, a particular thing specified in the direction.

(6) The Council shall comply with any direction given to it under this Article.

(7) The Secretary of State shall lay before both Houses of Parliament a copy of every direction given under this Article unless he is of the opinion that disclosure of the direction is against the interests of national security.

(8) A person shall not disclose, or be required by virtue of any statutory provision or otherwise to disclose, anything done by virtue of this Article if the Secretary of State has notified him that he is of the opinion that disclosure of that thing is against the interests of national security.



(9) Any person who discloses any matter in contravention of paragraph (8) shall be guilty of an offence and liable, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

### **Directions for preserving services or mitigating effects of emergency**

**295.**—(1) The Department may, after consultation with a relevant undertaker, give to that undertaker such directions of a general character as appear to the Department to be requisite or expedient for the purpose of—

- (a) preserving the security of buildings, installations, pipes or apparatus used for, or for purposes connected with, the provision of a water supply or sewerage services; or
- (b) preventing, or reducing, controlling or mitigating the effects of, any civil emergency which may occur.

(2) If it appears to the Department to be requisite or expedient to do so for any purpose mentioned in paragraph (1), it may, after consultation with a relevant undertaker, give to that undertaker a direction requiring it to do, or not to do, a particular thing specified in the direction.

(3) It shall be the duty of a relevant undertaker, notwithstanding any other duty imposed on it (whether or not by or under this Order), to comply with any direction given to it under this Article; and the duty of a relevant undertaker to comply with any such direction shall be enforceable under Article 30 by the Department.

(4) The Department may, after consultation with the Council, give to the Council such directions of a general character as to the exercise of its functions under this Order as appear to the Department to be requisite or expedient for any purpose mentioned in paragraph (1).

(5) If it appears to the Department to be requisite or expedient to do so for any purpose mentioned in paragraph (1), it may, after consultation with the Council, give to the Council a direction requiring it in the exercise of its functions under this Order to do, or not to do, a particular thing specified in the direction.

(6) The Council shall comply with any direction given to it under this Article.

(7) The Department shall lay before the Assembly a copy of every direction given under this Article unless the Secretary of State has notified it that he is of the opinion that disclosure of the direction is against the interests of national security.

(8) A person shall not disclose, or be required by virtue of any statutory provision or otherwise to disclose, anything done by virtue of this Article if the Secretary of State has notified him that the Secretary of State is of the opinion that disclosure of that thing is against the interests of national security.

(9) Any person who discloses any matter in contravention of paragraph (8) shall be guilty of an offence and liable, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(10) In this Article “civil emergency” means any event or situation which, in the opinion of the Department, causes or is likely to cause, in relation to any area—

(a) such—

- (i) disruption of water supplies or sewerage services;
- (ii) loss of life, injury or illness; or
- (iii) serious damage to property;

as seriously and adversely to affect all the inhabitants of that area, or a substantial number of them, (whether by depriving them of any of the essentials of life or otherwise); or

- (b) serious harm to the environment (including the life or health of plants or animals in that area).

### **Abolition of Northern Ireland Water Council**

**296.**—(1) On the transfer date—

- (a) any person holding office immediately before that date as chairman or other member of the Northern Ireland Water Council shall cease to hold that office; and
- (b) that Council is abolished.

(2) Accordingly—

- (a) Article 58 of the Water Order (constitution of that Council) is repealed;
- (b) the entry relating to that Council in Part VII of Schedule 1 to the Freedom of Information Act 2000 (c. 36) is repealed.

### **Safety of reservoirs**

**297.**—(1) The Department may make regulations with respect to the construction, inspection, maintenance and repair of reservoirs and dams.

(2) In this Article “reservoir” includes any place where water is artificially retained to form or enlarge a lake or lough, whether or not use is or is intended to be made of the water.

(3) No regulations may be made under this Article unless a draft of the regulations has been laid before, and approved by resolution of, the Assembly.

### **Civil liability of water undertaker for escape of water, etc**

**298.**—(1) Where an escape of water, however caused, from a pipe vested in a water undertaker causes loss or damage, the undertaker shall be liable, except as otherwise provided in this Article, for the loss or damage.

(2) A water undertaker shall not incur any liability under paragraph (1) if the escape was due wholly to the fault of the person who sustained the loss or damage or of any servant, agent or contractor of his.

(3) A water undertaker shall not incur any liability under paragraph (1) in respect of any loss or damage for which the undertaker would not be liable apart from that paragraph and which is sustained—

- (a) by a relevant undertaker or any statutory undertaker, within the meaning of Article 2(2) of the [Planning \(Northern Ireland\) Order 1991 \(NI 11\)](#);
- (b) by the Department, in connection with its functions under the [Roads \(Northern Ireland\) Order 1993 \(NI 15\)](#)
- (c) by DARD, in connection with its functions under the Drainage Order or the Lough Neagh Drainage Acts (Northern Ireland) 1955 and 1970;
- (d) by any person on whom a right to compensation is conferred by Article 42 of the [Street Works \(Northern Ireland\) Order 1995 \(NI 19\)](#);
- (e) by a person providing an electronic communications network within the meaning of section 32 of the Communications Act 2003 (c. 21);
- (f) by the Civil Aviation Authority; or
- (g) by a person who holds a licence under Chapter 1 of Part 1 of the Transport Act 2000 (c. 38).

(4) Section 2 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948 (c. 23), the [Fatal Accidents \(Northern Ireland\) Order 1977 \(NI 18\)](#) and the [Limitation \(Northern Ireland\)](#)

[Order 1989 \(NI 11\)](#) shall apply in relation to any loss or damage for which a water undertaker is liable under this Article, but which is not due to the undertaker's fault, as if it were due to its fault.

(5) Nothing in paragraph (1) affects any entitlement which a water undertaker may have to recover contribution under the Civil Liability (Contribution) Act 1978 (c. 47); and for the purposes of that Act, any loss for which a water undertaker is liable under that paragraph shall be treated as if it were damage.

(6) Where the Department is liable under any statutory provision or agreement passed or made before [the transfer date] to make any payment in respect of any loss or damage the undertaker shall not incur liability under paragraph (1) in respect of the same loss or damage.

(7) In this Article "fault" has the same meaning as in section 2 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948.

### *Supplemental*

#### **Prosecutions**

**299.**—(1) Proceedings in respect of an offence created by or under any of the relevant sewerage provisions shall not, without the written consent of the Director of Public Prosecutions for Northern Ireland, be taken by any person other than—

- (a) a party aggrieved;
- (b) a sewerage undertaker; or
- (c) a body whose function it is to enforce the provisions in question.

(2) Proceedings in respect of an offence created by or under Chapter II or III of Part IV or Article 226 or 227 shall not, without the written consent of the Director of Public Prosecutions for Northern Ireland, be taken by any person other than—

- (a) a party aggrieved;
- (b) a water undertaker; or
- (c) a body whose function it is to enforce the provisions in question.

(3) Notwithstanding anything in Article 19(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981, proceedings for an offence under this Order which is triable only summarily may be brought at any time within 6 months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings comes to the knowledge of the prosecutor; but no such proceedings shall be brought by virtue of this paragraph more than 2 years after the commission of the offence.

(4) For the purposes of paragraph (3) a certificate signed on behalf of the prosecutor and stating the date on which such evidence came to his knowledge shall be conclusive evidence of that fact; and a certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

#### **Regulations**

**300.**—(1) Regulations under this Order—

- (a) shall (except where express provision is otherwise made) be made by the Department; and
- (b) shall be subject (except in the case of regulations under Article 15(1) or (2) or 297) to negative resolution.

(2) Regulations under this Order may include—

- (a) provision for any duty or other requirement imposed by the regulations on a water undertaker or sewerage undertaker to be enforceable under Article 30 by the Department or by the Authority, or by either of those bodies;
  - (b) provision for enforcement of any such duty or requirement by the Authority to be subject to such consent or authorisation as may be prescribed;
  - (c) provision which, in relation to the furnishing of any information or the making of any application under the regulations, makes provision corresponding to Article 267;
  - (d) provision for anything that may be prescribed by the regulations to be determined under the regulations and for anything falling to be so determined to be determined by such persons, in accordance with such procedure and by reference to such matters, and to the opinion of such persons, as may be prescribed;
  - (e) provision for the determination of questions of fact or of law which may arise in giving effect to the regulations and for regulating (otherwise than in relation to any court proceedings) any matters relating to the practice and procedure to be followed in connection with the determination of such questions, including provision—
    - (i) as to the mode of proof of any matter;
    - (ii) as to parties and their representation;
    - (iii) for the right to appear before and be heard by the Department, the Authority and other authorities;
    - (iv) as to awarding costs of proceedings for the determination of any such questions, including the amount of the costs and the enforcement of the awards; and
  - (f) supplemental, incidental, consequential and transitional provision.
- (3) Any regulations under this Order which prescribe a period within which things are to be done may provide for extending the period so prescribed.

### **Directions**

- 301.**—(1) It shall be the duty of any person to whom a direction is given under this Order to give effect to that direction.
- (2) Any power conferred by this Order to give a direction includes power to vary or revoke the direction.
- (3) Any direction given under this Order shall be in writing.

### **Power to prescribe forms**

**302.** The Department may by regulations prescribe the form of any notice or other document to be used for any of the purposes of this Order.

### **Local inquiries**

- 303.**—(1) The Department may cause a local inquiry to be held in any case where it is authorised by any provision of this Order to determine any difference, to make any order, to give any consent or to take any other action.
- (2) Any power of the Department to cause a local inquiry to be held under this Order includes power to cause that inquiry to be held by the Appeals Commission.
- (3) The Department may make rules regulating the procedure to be followed in connection with any local inquiry held under this Order other than by the Appeals Commission.
- (4) Where—

- (a) an inquiry is to be held under this Order in connection with any matter; and
- (b) in the case of some other matter required or authorised (whether by this Order or by any other statutory provision) to be the subject of an inquiry (“the other inquiry”), it appears to the Department concerned that the matters are so far cognate that they should be considered together,

the Department concerned may direct that the inquiries be held concurrently or combined as one inquiry.

(5) In paragraph (4) “the Department concerned” means the Department, or where causing the other inquiry to be held is a function of some other Department, the Department and that other Department acting jointly.

(6) Schedule A1 to the Interpretation Act (Northern Ireland) 1954 (c. 33) applies in relation to a local inquiry held under this Order as it applies in relation to a local inquiry held under an enactment passed or made as mentioned in section 23 of that Act.

### **Construction of provision conferring powers by reference to undertakers' functions**

**304.**—(1) Paragraphs (2) to (6) apply for the purpose of the construction of any statutory provision which, by reference to the functions of a relevant undertaker, confers any power on or in relation to that undertaker.

(2) The functions of every relevant undertaker shall be taken to include joining with or acting on behalf of—

- (a) DOE or DARD;
- (b) one or more other relevant undertakers; or
- (c) any two or more of those bodies,

for the purpose of carrying out any works or acquiring any land which at least one of the bodies with which it joins, or on whose behalf it acts, is authorised to carry out or acquire for the purposes of that body’s functions under any statutory provision.

(3) The functions of every relevant undertaker shall be taken to include the protection against pollution—

- (a) of any waters, whether on the surface or underground, which belong to any water undertaker or from which any water undertaker is authorised to take water;
- (b) without prejudice to sub-paragraph (a), of any reservoir which belongs to or is operated by any water undertaker or which any water undertaker is proposing to acquire or construct for the purpose of being so operated; and
- (c) of any underground strata from which any water undertaker is for the time being authorised to abstract water.

(4) The functions of every relevant undertaker shall be taken to include the furtherance of research into matters in respect of which functions are conferred by or under this Order, the Drainage Order or the Water Order on DOE or DARD or on relevant undertakers.

(5) The functions of every relevant undertaker shall be taken to include the provision of houses and other buildings for the use of persons employed by that undertaker and the provision of recreation grounds for persons so employed.

(6) The functions of every water undertaker shall be taken to include the provision of supplies of water in bulk, whether or not such supplies are provided for the purposes of, or in connection with, the carrying out of any other function of that undertaker.

### Local statutory provisions

**305.** Nothing in any local statutory provision passed or made before the transfer date shall be construed as relieving any relevant undertaker from any liability arising by virtue of this Order in respect of any act or omission occurring on or after that date.

### Supplementary, incidental, consequential, transitional provision etc.

**306.**—(1) The Department may by order make—

- (a) such supplementary, incidental or consequential provision, or
- (b) such transitory, transitional or saving provision,

as it considers appropriate for the general purposes, or any particular purpose, of this Order, or in consequence of, or for giving full effect to, any provision made by this Order.

(2) An order under paragraph (1) may amend, repeal, revoke or otherwise modify any statutory provision (including this Order).

(3) The power to make an order under paragraph (1) includes power to repeal or revoke a statutory provision which is spent.

(4) Nothing in this Order affects the generality of the power conferred by this Article.

(5) No order shall be made under paragraph (1) unless a draft of the order has been laid before, and approved by resolution of, the Assembly.

### Application to the Crown

**307.**—(1) Subject to the provisions of this Article, this Order binds the Crown.

(2) No contravention by the Crown of any provision made by or under this Order shall make the Crown criminally liable; but the High Court may, on the application of a relevant undertaker, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in paragraph (2), any provision made by or under this Order shall apply to persons in the public service of the Crown as it applies to other persons.

(4) If the Secretary of State certifies that it appears to him, as respects any Crown land and any powers of entry exercisable in relation to it specified in the certificate, that it is requisite or expedient that, in the interests of national security, the powers should not be exercisable in relation to that land, those powers shall not be exercised in relation to that land.

(5) Subject to paragraph (4), the powers conferred by Articles 216, 220, 222(2) and 228 shall be exercisable in relation to Crown land only with the consent of the appropriate authority.

(6) In this Article any reference to the Crown includes a reference to the Crown in right of Her Majesty's Government in Northern Ireland.

“the appropriate authority” in relation to any land, means—

- (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners;
- (b) in the case of any other land belonging to Her Majesty in right of the Crown, the government department having the management of that land;
- (c) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, that government department;

and, if any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Department of Finance and Personnel or, as the case may be, the Treasury, whose decision shall be final;

“Crown estate” means an estate—

- (a) belonging to Her Majesty in right of the Crown; or
- (b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department;

“Crown land” means land in which there is a Crown estate.

In this Article—

### **Amendments and repeals**

**308.**—(1) The statutory provisions set out in Schedule 12 shall have effect subject to the minor and consequential amendments specified in that Schedule.

(2) The statutory provisions set out in Schedule 13 are hereby repealed to the extent specified in the second column of that Schedule.

*A. K. Galloway*  
Clerk of the Privy Council